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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE TWENTIETH INSTALMENT OF "E3" CLAIMS

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Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. Werner Melis (Chairman), David Mace and Sompong Sucharitkul, at its twenty-second session in October 1996 to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules") and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38(e) of the Rules, concerning eleven claims included in the twentieth instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait. The claims submitted to the Panel in this instalment and addressed in this report were selected by the secretariat of the Commission from among the construction and engineering claims (the "E3 Claims") on the basis of criteria established under the Rules.

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

2. The status and functions of the Commission are set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991) dated 2 May 1991 (S/22559). Pursuant to that report, the Commission is a fact-finding body that examines claims, verifies their validity, evaluates losses, recommends compensation, and makes payment of awards.

3. The Panel has been entrusted with three tasks in its proceedings. First, the Panel determines whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission. Second, the Panel verifies whether the alleged losses are in principle compensable and had in fact directly resulted from Iraq's invasion and occupation of Kuwait. Third, the Panel determines whether these compensable losses were incurred in the amounts claimed.

B. The procedural history of the claims in the twentieth instalment

4. On 5 February 2001, the Panel issued a procedural order relating to the claims. None of the claims presented complex issues, voluminous documentation or extraordinary losses that would require the Panel to classify them as "unusually large or complex" within the meaning of article 38(d) of the Rules. The Panel thus was required to complete its review of the claims within 180 days of the date of 5 February 2001.

5. The Panel performed a thorough and detailed factual and legal review of the claims. The Panel considered the evidence submitted by the claimants in reply to requests for information and documents. In accordance with article 16 of the Rules, it also considered Iraq's responses to the factual and legal issues raised in the thirty-first and the thirty-second reports of the Executive Secretary issued on 23 May 2000 and 28 July 2000, respectively.

6. After a review of the relevant information and documentation, the Panel made initial determinations as to the compensability of the loss elements of each claim. Pursuant to article 36 of the Rules, the Panel retained as its expert consultants accounting and loss adjusting firms, both with international and Persian Gulf experience, to assist the Panel in the quantification of losses incurred in large construction projects. The Panel then directed its expert consultants to prepare comprehensive valuation reports on each of the claims.

7. In drafting this report, the Panel has not included specific citations to restricted or non-public documents that were produced or made available to it for the completion of its work.

C. Amending claims after filing

8. The Panel notes that the period for filing category "E" claims expired on 1 January 1996. The Governing Council permitted claimants up to and including 11 May 1998 to file unsolicited supplements to claims already filed. A number of the claimants included in the twentieth instalment had submitted several supplements to their claimed amount up to 11 May 1998. In this report, the Panel has taken into consideration such supplements up to 11 May 1998. The Panel has only considered those losses contained in the original claim, as supplemented by the claimants, up to 11 May 1998, except where such losses have been withdrawn or reduced by the claimants. Where the claimants reduced the amount of their losses the Panel has considered the reduced amount. This, however, does not preclude corrections relating to aritnmetical and typographical errors.

D. The claims

9. This report contains the Panel's findings for losses allegedly caused by Iraq's invasion and occupation of Kuwait with respect to the following eleven claims:

(a) T.W. Engineering Limited, a corporation organised according to the laws of Cyprus, which seeks compensation in the amount of 2,480,035 United States dollars (USD);

(b) General Company for Electrical Projects "ELEJECT", a corporation organised according to the laws of Egypt, which seeks compensation in the amount of USD 5,415,081;

(c) Lurgi AG, a corporation organised according to the laws of Germany, which seeks compensation in the amount of USD 69,174;

(d) Hoechst CeramTec AG, a corporation organised according to the laws of Germany, which seeks compensation in the amount of USD 632,053;

(e) Pipeline Construction Co., a corporation organised according to the laws of Hungary, which seeks compensation in the amount of USD 4,043,675;

(f) Fujikura Ltd., a corporation organised according to the laws of Japan, which seeks compensation in the amount of USD 7,602,564;

(g) ABB Relays AG, a corporation organised according to the laws of Switzerland, which seeks compensation in the amount of USD 34,933;

(h) ABB Management (Arabia) Ltd., a corporation organised according to the laws of Switzerland, which seeks compensation in the amount of USD 67,755;

(i) Eastern Limited, a corporation organised according to the laws of the United Arab Emirates, which seeks compensation in the amount of USD 8,541,451;

(j) M.K. Electric Ltd., a corporation organised according to the laws of the United Kingdom of Great Britain and Northern Ireland, which seeks compensation in the amount of USD 1,471,706; and

(k) Parsons Main International, Inc., a corporation organised according to the laws of the United States of America, which seeks compensation in the amount of USD 218,765.

II. LEGAL FRAMEWORK

A. Applicable law

10. As set forth in paragraphs 16-18 and 23 of the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of 'E3' Claims" (S/AC.26/1998/13) (the "First Report"), the Panel determined that paragraph 16 of Security Council resolution 687 (1991) reaffirmed the liability of Iraq and defined the jurisdiction of the Commission. The Panel applied Security Council resolution 687 (1991), other relevant Security Council resolutions, decisions of the Governing Council, and, where necessary, other relevant rules of international law.

B. Liability of Iraq

11. As set forth in paragraph 16 of the "Report and Recommendations Made by the Panel of Commissioners concerning the Third Instalment of 'E3' Claims (S/AC.26/1999/1) (the "Third Report"), the Panel determined that "Iraq" as used in Governing Council decision 9 (S/AC.26/1992/9) means the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. At the time of Iraq's invasion and occupation of Kuwait, the Government of Iraq regulated all aspects of economic life other than some peripheral agriculture, services and trade.

C. The "arising prior to" clause

12. In paragraphs 79-81 of its First Report, the Panel adopted the following interpretation of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) with respect to contracts to which Iraq was a party:

(a) the phrase "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms" was intended to have an exclusionary

effect on the Commission's jurisdiction, i.e., that such debts and obligations could not be brought before the Commission;

(b) the period described by "arising prior to 2 August 1990" should be interpreted with due consideration to the purpose of the phrase, which was to exclude Iraq's existing bad debts from the Commission's jurisdiction;

(c) the terms "debts" and "obligations" should be given the customary and usual meanings applied to them in ordinary discourse; and

(d) the use of a three month payment delay period to define the jurisdictional period is reasonable and consistent both with the economic reality in Iraq prior to the invasion and with ordinary commercial practices.

13. The Panel finds that a claim relating to a "debt or obligation arising prior to 2 August 1990" means a debt for payment that is based on work performed or services rendered prior to 2 May 1990.

D. Application of the "direct loss" requirement

14. The Governing Council's decision 7 (S/AC.26/1991/7/Rev.1), decision 9 and decision 15 (S/AC.26/1992/15) provide specific instructions to the Panel regarding the interpretation of the "direct loss" requirement. Applying these decisions, the Panel examined the loss types presented in the claims to determine whether, with respect to each loss element, the requisite causal link - a "direct loss" - was present.

15. The Panel made the following findings regarding the meaning of "direct loss":

(a) with respect to physical assets in Iraq and in Kuwait on 2 August 1990, a claimant can prove a direct loss by demonstrating that the breakdown in civil order in those countries, which resulted from Iraq's invasion and occupation of Kuwait, caused the claimant to evacuate its employees and that the evacuation resulted in the abandonment of the claimant's physical assets;

(b) with respect to losses relating to contracts to which Iraq was a party, Iraq may not rely on force majeure or similar legal principles as a defence to its obligations under the contract;

(c) with respect to losses relating to contracts to which Iraq was not a party, a claimant may prove a direct loss if it can establish that Iraq's invasion and occupation of Kuwait or the breakdown in civil order in Iraq or Kuwait following the invasion caused the claimant to evacuate the personnel needed to perform the contract;

(d) costs incurred in taking reasonable steps to mitigate the losses incurred by the claimant are direct losses, bearing in mind that the claimant was under a duty to mitigate any losses that could reasonably be avoided after the evacuation of its personnel from Iraq or Kuwait; and

(e) the loss of use of funds on deposit in Iraqi banks is not a direct loss unless the claimant can demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for

convertible currencies and to authorize the transfer of the converted funds out of Iraq and that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

E. Loss of profits

16. In order to substantiate a claim for loss of profits, a claimant must prove that it had an existing contractual relationship at the time of the invasion. Second, a claimant must prove that the continuation of the relationship was rendered impossible by Iraq's invasion and occupation of Kuwait. Finally, profits should be measured over the life of the contract. A claimant must demonstrate that the contract would have been profitable as a whole. Thus, a claimant must demonstrate that it would have been profitable to complete the contract, not just that the contract was profitable at a single moment in time.

17. Calculations of a loss of profits claim should take into account the inherent risks of the particular project and the ability of a claimant to realize a profit in the past. The speculative nature of some projects requires the Panel to view the evidence submitted with a critical eye. In order to establish with "reasonable certainty" a loss of profits claim, the Panel requires that a claimant submit not only the contracts and invoices related to the various projects, but also detailed financial statements, including audited statements where available, management reports, budgets, accounts, time schedules, progress reports, and a breakdown of revenues and costs, actual and projected, for the project.

F. Date of loss

18. The Panel must determine "the date the loss occurred" within the meaning of Governing Council decision 16 (S/AC.26/1992/16) for the purpose of recommending compensation for interest and for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars. Where applicable, the Panel has determined the date of loss for each claim.

G. Interest

19. According to decision 16, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards," while postponing decision on the methods of calculation and payment of interest.

20. The Panel finds that interest shall run from the date of loss, or, unless otherwise established, 2 August 1990.

H. Currency exchange rate

21. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore, the Panel is required to determine the appropriate rate of exchange to apply to losses expressed in other currencies.

22. The Panel finds that the exchange rate set forth in the contract is the appropriate rate for losses under the relevant contracts because this was specifically bargained for and agreed to by the parties.

23. For non-contractual losses, the Panel finds the appropriate exchange rate to be the prevailing commercial rate, as evidenced by the United Nations Monthly Bulletin of Statistics on the date of loss, or, unless otherwise established, from 2 August 1990.

I. Evacuation losses

24. In accordance with paragraph 21(b) of decision 7 of the Governing Council, the Panel finds that the costs associated with evacuating and repatriating employees from Iraq between 2 August 1990 and 2 March 1991 are compensable to the extent that such costs are proven by the claimant. Compensable costs consist of temporary and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation.

J. Valuation

25. The Panel developed, with the assistance of the secretariat and the Panel's expert consultants, a verification program that addresses each loss item. The Panel's valuation analysis ensures clarity and consistency in the application of certain valuation principles to the construction and engineering claims.

26. After receipt of all claim information and evidence, the Panel applied the verification program to each loss element. This analysis resulted in a recommendation of compensation in the amount claimed, an adjustment to the amount claimed, or a recommendation of no compensation for each loss element.

27. For tangible property losses, the Panel adopted historical cost minus depreciation as its primary valuation method.

K. Formal requirements

28. Claims submitted to the Commission must meet certain formal requirements established by the Governing Council. Article 14 of the Rules sets forth the formal requirements for claims submitted by corporations and other legal entities. If it is determined that a claim does not meet the formal requirements as set forth in article 14 of the Rules, the claimant is sent a notification under article 15 of the Rules (the "article 15 notification") requesting the claimant to remedy the deficiencies.

L. Evidentiary requirements

29. Pursuant to article 35(3) of the Rules, corporate claims must be supported by evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has made it clear in paragraph 5 of decision 15 that, with respect to business losses, there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order to recommend compensation.

30. The category "E" claim form requires all corporations and other legal entities that have filed claims to submit with their claim form "a separate statement explaining its claim ('Statement of Claim'), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss".

31. In those cases where the original submission of the claim inadequately supported the alleged loss, the secretariat prepared and issued a written communication to the claimant requesting specific information and documentation regarding the loss (the "article 34 notification"). In reviewing the subsequent submissions, the Panel noted that in many cases the claimant still did not provide sufficient evidence to support its alleged losses.

32. The Panel is required to determine whether these claims are supported by sufficient evidence and, for those that are so supported, must recommend the appropriate amount of compensation for each compensable claim element. This requires the application of relevant principles of the Commission's rules on evidence and an assessment of the loss elements according to these principles. The recommendations of the Panel are set forth below.

III. T. W. ENGINEERING LIMITED

33. T.W. Engineering Limited ("T.W. Engineering") is a corporation organised according to the laws of Cyprus, which is wholly owned by British shareholders. T.W. Engineering seeks compensation in the amount of 716,730 Kuwaiti dinars (KWD) (USD 2,480,035) for contract losses, tangible property losses, payment or relief to others, losses related to business transaction or course of dealing and for what it describes as "disruption of legal proceedings". In addition, T.W. Engineering has filed a separate "contingent" claim for the entire amount of its claim in the event that the Commission does not award compensation for the losses referred to above, on the grounds of lack of evidence.

34. T.W. Engineering filed its claim with the Commission through the Government of the United Kingdom in 1994. At the time of filing its claim, T.W. Engineering filed a separate, identical, claim through the Government of Cyprus (the "Cyprus claim"). The Cyprus claim was included in the third instalment of "E3" claims. The Panel's recommendations concerning the Cyprus claim were contained in its Third Report.

35. The Panel finds that the claim is a duplicate of the Cyprus claim. Accordingly, the Panel makes no recommendation with respect to this duplicate claim in the current instalment, and refers the claimant to its Third Report for its disposition of T.W. Engineering's claim.

IV. GENERAL COMPANY FOR ELECTRICAL PROJECTS "ELEJECT"

36. General Company for Electrical Projects "ELEJECT" ("Eleject") is a corporation organised according to the laws of Egypt operating in the construction industry.

37. In the "E" claim form, Eleject sought compensation in the amount of USD 5,415,091 for contract losses, and interest at the rate of 10 per cent. The Panel notes that Eleject's claim contains a calculation error. The nature of the error is described at paragraph 88, infra, which the Panel has corrected. As a result of this correction, the total claimed amount has changed to USD 5,415,081.

38. The Panel reclassified the contract loss element of Eleject's claim for the purposes of this report. The Panel therefore considered the amount of USD 5,415,081 for contract losses, loss of profits, payment or relief to others, financial losses, and other losses, as follows:

Table 1. Eleject's claim

Claim element	Claim amount (USD)
Contract losses	2,472,515
Loss of profits	2,091,231
Payment or relief to others	44,370
Financial losses	379,712
Other losses	427,253
Interest (no amount specified)	(--)
Total	5,415,081

A. Contract losses

1. Facts and contentions

39. Eleject seeks compensation in the amount of USD 2,472,515 for contract losses. Eleject's contract losses arise out of a contract it entered into on 22 July 1989 with the Yemen General Electricity Corporation (the "Corporation"). The project was for the electrification of the rural regions damaged by the earthquake at Dhamar in Yemen. The initial contract value was USD 18,573,067 and 22,807,009 Yemeni rials (YER). The project was to commence from 1 May 1990 and was to be completed within a period of 730 days.

40. The project was financed through a loan from the Kuwait Fund for Arab Economic Development (the "Fund"). All claims for advances under this loan had to be approved by the Fund. Under this arrangement, the Arab International Bank in Cairo ("AIB"), the advisory bank, advised Eleject that at the instructions of the Corporation, the Central Bank of Yemen had opened a letter of

credit dated 27 March 1990 in favour of Eleject. The Fund, in turn, issued an Irrevocable Agreement to Reimburse dated 19 April 1990. Under the terms of this agreement, the Fund agreed to reimburse AIB for payments made to Eleject or to its order pursuant to the terms of the letter of credit dated 27 March 1990. The agreement to reimburse was valid until 12 June 1992.

41. Eleject asserted that due to Iraq's invasion and occupation of Kuwait, the project works were suspended for eight months from 1 September 1990 to 30 April 1991 because "it was impossible for the [Fund] to effect transfer of the invoiced values". Both the Corporation and Eleject requested the Fund to extend the financing for a period of eight months beyond 12 June 1992. However, the Fund refused to extend its obligations beyond what it had agreed originally.

42. Despite the refusal by the Fund to extend the financing facility, both the Corporation and Eleject continued with the project. The rate of progress was delayed, which Eleject alleged was due to the Corporation's shortage of foreign currency. The various areas of the project works were actually completed between February 1996 and February 1999.

43. Eleject seeks compensation in the amount of USD 1,900,584 for increase in local costs; USD 453,333 for "delay penalty"; and USD 118,598 for increase in the cost of materials.

(a) Increase in local costs

44. Eleject seeks compensation in the amount of USD 1,900,584 for losses suffered due to 100 per cent increase in the cost of goods and services as a result of Iraq's invasion and occupation of Kuwait. In effect, Eleject is seeking compensation for the entire amount of the local currency portion of the contract, which is YER 22,807,009. It has converted this amount into United States dollars at the exchange rate USD 1 = YER 12.

(b) "Delay penalty"

45. Eleject seeks compensation in the amount of USD 453,333 for "delay penalty". Eleject asserted that pursuant to clause 47 of the contract it had to pay liquidated damages to the Corporation because of the delay in the completion of the project works.

(c) Increase in the cost of materials

46. Eleject seeks compensation in the amount of USD 118,598 for losses suffered due to the increase in the cost of materials as a result of Iraq's invasion and occupation of Kuwait. The claim is in respect of prices of materials before and after Iraq's invasion and occupation of Kuwait.

47. The claim is divided into three parts. First, Eleject asserted that originally it had ordered certain goods from Mitsa International. However, after Iraq's invasion and occupation of Kuwait, as Mitsa International was charging a higher price, it purchased certain materials for a lower price from Emeco Ltd. Both these companies are suppliers based in Cyprus.

48. Second, it asserted that the pre-invasion price of five transformers was lower than what it paid to Westinghouse ABB Power T&D Company based in Pennsylvania, United States of America ("ABB") after Iraq's invasion and occupation of Kuwait.

49. Third, it asserted that the pre-invasion prices of certain materials quoted by Mitsa International were lower than the prices charged after Iraq's invasion and occupation of Kuwait.

2. Analysis and valuation

(a) Increase in local costs

50. As evidence of its claim for contract losses, Eleject provided a copy of a Cabinet decision of the Government of Yemen dated 24 October 1990, which increased the freight charges by 15 per cent due to the increase in the price of oil. The evidence provided by Eleject does not establish therefore that the price of oil increased as a direct result of Iraq's invasion and occupation of Kuwait, or that the price of goods and services increased by 100 per cent after Iraq's invasion and occupation of Kuwait.

51. Eleject also provided a copy of a decision of the Prime Minister of Yemen, which indicates that the prices of petroleum derivatives were to be applied uniformly throughout Yemen from 16 July 1990. It also provided a copy of a memorandum dated 8 April 1992 from the Ports and Maritime Affairs Corporation of Yemen. This memorandum provided for a retroactive increase in the wages of labourers performing manual work at the ports by 50 per cent from 1 March 1992.

52. The uniform implementation of prices of petroleum derivatives from 16 July 1990 (prior to Iraq's invasion and occupation of Kuwait) cannot be attributed to Iraq's invasion and occupation of Kuwait. The evidence provided by Eleject does not establish that the increase in wages for workers performing only manual work at the ports from 1 March 1992 was the direct result of Iraq's invasion and occupation of Kuwait.

53. The Panel finds that Eleject failed to establish that the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait. The various actions in regard to commodity pricing undertaken by the Government of Yemen all operate as intervening causes between Iraq's invasion and occupation of Kuwait and Eleject's losses. In any event, Eleject has failed to provide sufficient evidence to substantiate its claim, and therefore, how it suffered a loss.

(b) "Delay penalty"

54. As evidence of its claim for contract losses, Eleject provided a copy of the contract. Eleject did not provide evidence, which would establish that the Corporation imposed the "delay penalty" or that Eleject actually paid the alleged amount to the Corporation. The Panel finds that Eleject failed to provide sufficient evidence to substantiate its claim, and therefore, how it suffered a loss.

(c) Increase in the cost of materials

55. First, with respect to its claim related to lower prices charged by Emeco Ltd., Eleject provided a copy of an invoice dated 24 April 1992 issued by Emeco Ltd., and a hand-written schedule comparing

the prices of the two suppliers. It also provided three pages from an undated invoice issued by Mitsa International. Eleject did not provide the post-invasion prices of Mitsa International related to the products that it purchased from Emeco Ltd. The Panel therefore finds that the evidence provided by Eleject does not establish that it suffered the alleged loss.

56. Second, with respect to its claim related to higher prices charged by ABB for the five transformers, Eleject provided a copy of an invoice dated 8 November 1989 issued by ABB, and a copy of a quotation dated 14 October 1991 also issued by ABB. There are nearly 16 items listed on the invoice dated 8 November 1989. Eleject did not explain why ABB was charging a higher price in relation to only one item. In the absence of any evidence to the contrary, the Panel finds that it is unlikely that the price of only one item would increase as a direct result of Iraq's invasion and occupation of Kuwait.

57. Third, with respect to its claim related to higher prices charged by Mitsa International, Eleject provided a hand-written schedule comparing the old prices to the new prices and extracts from an invoice dated 20 April 1992. Eleject did not provide independent evidence of pre-invasion prices. The evidence provided by Eleject does not establish that it suffered the alleged loss. Moreover, the Panel finds that it is unlikely that an increase in the price in April 1992 was a direct result of Iraq's invasion and occupation of Kuwait.

58. With respect to Eleject's claim for the increase in the cost of materials, the Panel finds that Eleject failed to provide sufficient evidence to substantiate its claim, and therefore, how it suffered a loss. It also failed to establish that the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

59. The Panel recommends no compensation for contract losses.

B. Loss of profits

1. Facts and contentions

60. Eleject seeks compensation in the amount of USD 2,091,231 for loss of profits calculated at the rate of 10 per cent of the total contract value. Eleject asserted that if it had completed the project works on time, it would have realised a profit of 10 per cent.

61. In its reply to the article 34 notification, Eleject asserted that according to the planned financial study of the project given to its directors in September 1988, it had expected to earn a profit of 14 per cent. However, the shortage of financing, the breakdown of civil order in Kuwait, the "absence" of the Fund in August 1990 and the Fund's refusal to extend the validity of the financing beyond the stipulated period resulted in a dramatic drop "in this percentage". Eleject also asserted that the delay in payments by the "Yemeni government caused the expansion of the execution period of the project and consequently increased the costs incurred by [it]".

2. Analysis and valuation

62. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17, supra.

63. From the assertions made by Eleject, there appears to be a multiplicity of contributing factors that ultimately led to the delay of the project works. The failure on the part of the Government of Yemen to pay Eleject on time and the decision of the Fund not to extend the financing period beyond what it had agreed all operate as intervening causes between Iraq's invasion and occupation of Kuwait. Accordingly, the Panel is unable to conclude that the project works were delayed as a direct result of Iraq's invasion and occupation of Kuwait.

64. Moreover, for a loss of profits claim, the Panel requires that a claimant must establish that the continuation of the contractual relationship that existed on 2 August 1990 was rendered impossible by Iraq's invasion and occupation of Kuwait. In this case, Eleject completed the project works.

3. Recommendation

65. The Panel recommends no compensation for loss of profits.

C. Payment or relief to others

1. Facts and contentions

66. Eleject seeks compensation in the amount of USD 44,370 for payment or relief to others.

67. The claim is for salaries paid to Eleject's employees when the project works were suspended for eight months. The claimed amount also includes costs incurred to transport the employees to Egypt, and back to Yemen when the project works recommenced, and expenses incurred for storing the materials and expenses for the offices and the rest houses.

2. Analysis and valuation

68. As evidence of its claim for payment or relief to others, Eleject provided salary statements for the months of July and October 1990. It also provided a list of its employees with their names, job titles and passport numbers.

69. Eleject did not provide a breakdown of the amount claimed. It did not provide proof of actual payment of the salaries. It did not provide invoices or proof of payment related to purchase of air tickets or for any other expense, which it alleged to have incurred. The Panel notes that Eleject, in its reply to the article 34 notification, advised that the "financial regulations controlling [Eleject] in Egypt is limiting the period for keeping the financial documents with [for] only five years".

70. The Panel finds that Eleject failed to provide sufficient evidence to substantiate its claim, and therefore, how it suffered a loss.

3. Recommendation

71. The Panel recommends no compensation for payment or relief to others.

D. Financial losses

1. Facts and contentions

72. Eleject seeks compensation in the amount of USD 379,712 for financial losses, which includes USD 288,135 for expenses incurred on renewing letters of guarantee and letters of credit, and USD 91,577 for losses suffered due to delayed payments.

(a) Costs for renewing letters of guarantee and letters of credit

73. Eleject seeks compensation in the amount of USD 288,135 for this loss item, which is divided into two parts.

74. First, Eleject seeks compensation in the amount of USD 216,942 for expenses incurred on renewing letters of guarantee. In its reply to the article 34 notification, Eleject asserted that it incurred costs to renew the performance guarantee and the guarantee given for advance payment. It further asserted that the performance guarantee was still valid for 40 per cent of its value, and that the advance payment guarantee was extended up to September 1999.

75. Second, Eleject seeks compensation in the amount of USD 71,193 for expenses incurred on renewing letters of credit, which were issued in favour of its suppliers. From Eleject's reply to the article 34 notification, it appears that the letters of credit were issued in 1990 and were released on their expiry dates in 1991.

(b) Costs due to delayed payments

76. Eleject seeks compensation in the amount of USD 91,577 for this loss item, which is divided into two parts.

77. First, Eleject seeks compensation in the amount of USD 33,560 related to interest charged by AIB on late settlement of a letter of credit due to the hiatus in funding from the Fund. Eleject asserted that Nokia, one of its suppliers, delivered certain materials for the project in August 1990. On 29 August 1990, AIB paid for the letter of credit, which was opened at the request of Eleject in favour of Nokia. As AIB did not receive the amounts from the Fund, it charged the unpaid amounts to Eleject's account. Eleject's account was overdrawn due to the insufficiency of funds. On 8 November 1990, after the Fund was able to commence operations from a temporary office in London, AIB received the amounts that it had paid to Nokia. AIB charged interest in the amount of USD 33,560 for the time Eleject's account was overdrawn.

78. Second, Eleject seeks compensation in the amount of USD 58,017 for interest due against the Corporation in respect of late payment of certified invoices following the hiatus in funding from the Fund.

2. Analysis and valuation

(a) Costs for renewing letters of guarantee and letters of credit

79. As evidence of its claim for financial losses, Eleject provided a large number of documents supporting the payment of fees on letters of guarantee and letters of credit. The debit advices from AIB give limited information to the nature and the period of the charges.

80. In the article 34 notification, Eleject was requested to explain how Iraq's invasion and occupation of Kuwait directly caused the losses in connection with the letters of guarantee and letters of credit. In its reply, Eleject stated that even though the Fund had stopped financing the project works after Iraq's invasion and occupation of Kuwait, it was "still [Eleject's] responsibility to extend the validity of the letters of credit and guarantees for the project during the stoppage period and pay the required bank fees".

81. The Panel notes that Eleject was required to pay fees and commissions to the banks that had issued the letters of guarantee and the letters of credit, on its behalf. These expenses would have been incurred irrespective of Iraq's invasion and occupation of Kuwait. The Panel finds that Eleject has failed to establish that these expenses are additional to the fees and charges it would have incurred had the invasion and occupation of Kuwait by Iraq not taken place.

(b) Costs due to delayed payments

82. With respect to its claim for interest charged by AIB, Eleject provided a copy of the letter of credit dated 27 April 1990 opened by the Central Bank of Yemen at the request of the Corporation. It also provided a copy of the Fund's Irrevocable Agreement to Reimburse dated 19 April 1990, and copies of correspondence exchanged with AIB in relation to Eleject's request to waive the interest charge.

83. With respect to Eleject's claim for interest charged by AIB, it appears to the Panel that there is some linkage to Iraq's invasion and occupation of Kuwait, however, it is unlikely that the loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait. The evidence provided by Eleject does not establish that AIB charged its account and that the account was overdrawn as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that the loss is too remote to be the direct result of Iraq's invasion and occupation of Kuwait.

84. With respect to its claim for interest against the Corporation, Eleject provided a copy of a letter dated 29 June 1991 addressed to the project engineer in which it set out its claim for interest for 69 days due to the delay in payment of certified invoices. In this letter, Eleject summarised its claim for interest payments in the amount of USD 58,017 against the Corporation pursuant to clause 69 (4) of the contract and the minutes of a meeting held at the Corporation's office from 18 to 20 July 1989.

85. Eleject did not explain the outcome of its claim against the Corporation or the steps that it took to recover the money. Eleject also did not explain why the Corporation did not pay the claimed amount. In the absence of any explanation to the contrary, the Panel finds that Eleject has failed to

establish that it suffered the alleged loss as a direct result of Iraq's invasion and occupation of Kuwait. For example, it failed to demonstrate that the Corporation was unable to pay the amount of USD 58,017 because it was rendered insolvent, liquidated or otherwise rendered unable to pay as a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

86. The Panel recommends no compensation for financial losses.

E. Other losses

1. Facts and contentions

87. Eleject seeks compensation in the amount of USD 427,253 for other losses. The losses relate to additional shipping and storage costs in the amount of USD 266,963; USD 133,000 for the cost of local hire of transport; and USD 27,290 for expenses incurred on insurance premiums.

(a) Additional shipping and storage costs

88. Eleject sought compensation in the amount of USD 266,973 for expenses incurred on additional shipping and storage costs for the period when the project works were suspended. The sum total of the expenses incurred on additional shipping and storage costs is USD 266,963 and not USD 266,973. The Panel therefore considered the claim in the amount of USD 266,963. The costs are summarised in the table below.

Table 2. Eleject's claim for additional shipping and storage costs

Supplier	(USD)
Mitsa:	
Invoice of 30 November 1990 and AIB debit advice. Charges in respect of shipping delays between 16 July 1990 and 28 November 1990.	9,662
Faxed demand dated 4 November 1992. "additional charges for stoppage of shipment".	95,565
Domtar Inc. Letter of 21 June 1991 setting out increased charges for shipment of telegraph poles to Yemen arising from: (i) increased freight charges; (ii) "dead freight penalty" on cancelled voyage; and (iii) storage of poles from November 1990 to April 1991.	161,736
Total	266,963

(b) Additional cost for local hire of transport

89. Eleject seeks compensation in the amount of USD 133,000 for expenses incurred on hiring vehicles in Yemen. Eleject asserted that according to the terms of the contract, it had to provide a

certain number of vehicles to the Corporation's personnel. However, as the vehicles could not be shipped from Kuwait due to Iraq's invasion and occupation of Kuwait, it had to hire them locally in Yemen.

(c) Expenses incurred on insurance

90. Eleject seeks compensation in the amount of USD 27,290 for the expenses incurred on insuring its equipment during the period when the project works were suspended. The claim is summarised in the table below.

Table 3. Eleject's claim for expenses incurred on insurance

Date paid	Description	(USD)
28/7/90	First instalment re policy no. 230507.	1,049
27/6/90	Half settlement of policy MAR/0/SAN. Marine Cargo policy USD 10,549,000. Cover from 22 July 1989, valid until insured sum is exhausted.	18,469
28/7/90	First instalment re policy no. 235075. Valid from May 1990 to April 1992.	7,772
	Total	27,290

2. Analysis and valuation

(a) Additional shipping and storage costs

91. Eleject did not provide any evidence, which established that it actually paid the amounts of USD 95,565 and USD 161,736. With respect to the balance amount of USD 9,662, Eleject provided a copy of an invoice dated 30 November 1990 from Mitsa International Inc. It also provided a copy of a debit advice dated 4 March 1991 from AIB, which indicates that AIB debited Eleject's account for an amount of USD 9,662.

92. The amount of USD 9,662 comprises a claim for interest from 16 July to 28 September 1990 in the amount of USD 1,758; USD 3,516 for storage and handling charges from 16 July to 28 September 1990; and USD 4,388 for difference on exchange rates.

93. With respect to its claim for interest, and storage and handling charges, Eleject did not provide the original dates of shipment. Moreover, as the expenses began to run from July 1990, the Panel finds that the alleged expenses were not incurred as a direct result of Iraq's invasion and occupation of Kuwait. In its reply to the article 34 notification, Eleject provided copies of additional invoices, which were drawn on its suppliers. However, it did not provide evidence, which established that it actually paid its suppliers.

94. With respect to the loss due to the difference in the exchange rates, the alleged loss relates to movement between the United States dollar and the Pound sterling. Eleject did not provide sufficient

evidence to establish that a movement between these two currencies was due to the direct result of Iraq's invasion and occupation of Kuwait.

(b) Additional cost for local hire of transport

95. The Panel notes that, Eleject, in its reply to the article 34 notification, stated that the vehicles were rented "from the local market on daily basis rent where we couldn't keep the relevant documents of payment". The Panel therefore finds that Eleject failed to provide sufficient evidence to substantiate its claim, and therefore, how it suffered a loss.

(c) Expenses incurred on insurance

96. As evidence of its claim for other losses, Eleject provided copies of receipts from the insurance company acknowledging the receipt of premiums and copies of the insurance policies.

97. In its reply to the article 34 notification, Eleject asserted that because certain goods had arrived in Yemen, it could not "stop the insurance certificates and paid for the Yemen General Insurance Co. to make the certificates valid during the stoppage period". In this case, the project works were suspended in September 1990 and the copies of receipts provided by Eleject indicate that it made payments to the insurance company in June and July 1990. It therefore appears to the Panel that Eleject did not pay any additional amounts to have insurance coverage during the suspension period. The Panel finds that Eleject has failed to establish that it would not have incurred these expenses had it not been for Iraq's invasion and occupation of Kuwait. As such, Eleject has failed to establish that the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

98. The Panel recommends no compensation for other losses.

F. Interest

99. As the Panel recommends no compensation, there is no need for the Panel to determine the date of loss from which interest would accrue.

G. Recommendation for Eleject

Table 4. Recommended compensation for Eleject

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	2,472,515	nil
Loss of profits	2,091,231	nil
Payment or relief to others	44,370	nil
Financial losses	379,712	nil
Other losses	427,253	nil
Interest (no amount specified)	(--)	(--)
Total	5,415,081	nil

100. Based on its findings regarding Eleject's claim, the Panel recommends no compensation.

V. LURGI AG

101. Lurgi AG ("Lurgi") is a corporation organised according to the laws of Germany operating in the construction industry. In its original submission, Lurgi sought compensation in the amount of KWD 155,957 (USD 539,644) and 23,899 Deutsche Mark (DEM) (USD 15,300) for contract losses and interest. Lurgi also indicated that it received compensation from Hermes Kreditversicherungs AG ("Hermes"); however, it did not take this compensation into account in the original calculation of its claim before the Commission.

102. In its reply to the article 15 notification, Lurgi asserted that the original claimed amount was misleading as it had failed to take into account the compensation it had received from Hermes. Lurgi therefore reduced its claim by the amount of compensation it received. The reduction to the claimed amounts is described at paragraphs 106 and 110, infra. The Panel notes that Lurgi's claim for contract losses contains an arithmetic error. The nature of the error is described at paragraph 106, infra, which the Panel has corrected. For the reasons stated in paragraph 8, supra, the Panel has considered the amount of DEM 108,050 (USD 69,174) for contract losses and interest.

Table 5. Lurgi's claim

Claim element	Claim amount (USD)
Contract losses	49,776
Interest	19,398
Total	69,174

A. Contract losses

1. Facts and contentions

103. Lurgi seeks compensation in the amount of USD 49,776 for contract losses. The losses were allegedly incurred in connection with three contracts it entered into with the Petrochemicals Industries Company of Kuwait (the "Petrochemical Company").

104. First, on 26 September 1987, Lurgi entered into a contract with the Petrochemical Company for the execution of a Purge Gas Hydrogen Recovery Unit (the "Gas Project") in Kuwait.

105. Second, on 6 September 1989 and 27 March 1990, Lurgi entered into two contracts with the Petrochemical Company for the supply of certain items required for the Gas Project (the "Supply Contracts").

(a) Gas Project

106. In its original submission, Lurgi sought compensation in the amount of KWD 136,710 for the Gas Project. It asserted that it received DEM 678,275 as compensation from Hermes. In its revised Statement of Claim, Lurgi reduced its claim to KWD 13,671 (i.e. the balance of its alleged losses after

taking into account the payment by Hermes). It converted KWD 13,671 into Deutsche Mark using the exchange rate KWD 1 = DEM 5.512, which equals DEM 75,355. Due to a typographical error, instead of claiming DEM 75,355, Lurgi claimed an amount of DEM 73,355. Given that the underlying evidence supports the amount of DEM 75,355, the Panel has considered this amount for contract losses relating to the Gas Project.

107. Lurgi asserted that project works included designing, supplying and supervising the erection and the commissioning of the Gas Project. The total contract value was KWD 455,700, to be paid in lump sum instalments, upon completion of various stages of the contract. Lurgi stated that as of 2 August 1990, it had received 70 per cent of the total contract value and that the final two instalments [(d) and (e)] remain unpaid because of Iraq's invasion and occupation of Kuwait.

108. Instalment (d) was for 10 per cent of the contract value and was to be paid on mechanical completion of the gas unit. Instalment (e) was for the balance of 20 per cent of the contract value, which was to be paid on the satisfactory performance of the test-run of the gas unit, and upon issue of the preliminary handing over certificate.

109. Lurgi alleged that it had supervised the erection of the gas unit, which was completed in July 1989. However, the mechanical completion could not be demonstrated by test-run due to the "client's fault". It further alleged that the commissioning of the plant, which began on 24 July 1990, was scheduled to last for three weeks, however, it could not be completed because of Iraq's invasion and occupation of Kuwait. Lurgi also stated that the "Iraqis dismantled the plant and transported it to Iraq so that [it] can no longer perform its services".

(b) Supply Contracts

110. In its original submission, Lurgi sought compensation in the amount of DEM 20,950 for the Supply Contracts. It asserted that it received compensation from Hermes in the amount of DEM 18,555. In its revised Statement of Claim, Lurgi sought compensation in the amount of DEM 2,395 (i.e. the balance of its alleged losses after taking into account the payment by Hermes).

111. Lurgi asserted that it supplied certain materials required for the Gas Project to the Petrochemical Company pursuant to their two purchase orders dated 6 September 1989 and 27 March 1990, respectively. Lurgi alleged that it did not receive its payments because of Iraq's invasion and occupation of Kuwait.

2. Analysis and valuation

(a) Gas Project

112. As evidence of its claim for contract losses, Lurgi provided a copy of the contract dated 26 September 1987 along with the special conditions. It also provided copies of invoices issued in August 1988 and January 1989 and a bill of lading along with air transportation bills.

113. In the article 34 notification, Lurgi was requested to explain the nature of the "client's fault" due to which the mechanical completion could not be demonstrated by a test-run. It was also requested to

provide evidence that the commissioning commenced on 24 July 1990 and that Iraq had dismantled the plant after 2 August 1990. The Panel notes that Lurgi in its reply to the article 34 notification advised that it had no further information to give other than that which it had already provided.

114. In the absence of sufficient supporting evidence, the Panel finds that Lurgi failed to establish that it suffered the alleged loss or that the loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

(b) Supply Contracts

115. As evidence of its claim for contract losses, Lurgi provided copies of both the purchase orders and copies of invoices dated 7 June 1990 and 19 April 1990, respectively. It also provided copies of air transportation bills dated 25 June 1990 and 7 May 1990.

116. In this case, air transportation bills indicate that the goods were delivered in Kuwait in May and June 1990. Lurgi did not explain why it did not receive its payments prior to 2 August 1990 or how the non-payment was directly related to Iraq's invasion and occupation of Kuwait. In the article 34 notification, Lurgi was requested to advise if the Petrochemical Company had gone into liquidation, been rendered insolvent, or otherwise ceased to exist, as a result of Iraq's invasion and occupation of Kuwait. The Panel notes that Lurgi in its reply to the article 34 notification advised that it had no further information to give than what it had already provided.

117. In the absence of sufficient supporting evidence, the Panel finds that Lurgi failed to establish that the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

118. The Panel recommends no compensation for contract losses.

B. Interest

119. As the Panel recommends no compensation, there is no need for the Panel to determine the date of loss from which interest would accrue.

C. Recommendation for Lurgi

Table 6. Recommended compensation for Lurgi

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	49,776	nil
Interest	19,398	nil
Total	69,174	nil

120. Based on its findings regarding Lurgi's claim, the Panel recommends no compensation.

VI. HOECHST CERAMTEC AG

121. Hoechst CeramTec AG ("Hoechst") is a corporation organised according to the laws of Germany operating in the construction and engineering industry. Hoechst seeks compensation in the amount of DEM 987,267 (USD 632,053) for contract losses.

Table 7. Hoechst's claim

Claim element	Claim amount (USD)
Contract losses	632,053
Total	632,053

A. Contract losses

1. Facts and contentions

122. Hoechst seeks compensation in the amount of USD 632,053 for contract losses.

123. The Panel notes that Hoechst did not provide a Statement of Claim. However, from the documents provided by Hoechst, the Panel discerns that M/s Fujikura Ltd., a Japanese corporation ("Fujikura"), entered into a contract with the Ministry of Electricity and Water of Kuwait for the supply and installation of 132/33/11KV overhead transmission line project (the "Project"). On 3 June 1990, Fujikura placed an order with Hoechst for the supply of certain products required for the Project. The purchase order was for a total value of DEM 2,649,100 on a C & F (cost and freight) basis.

124. After Iraq's invasion and occupation of Kuwait, in a facsimile dated 6 August 1990, Fujikura requested Hoechst to suspend all its activities relating to the "manufacture, delivery and shipment" of the goods. On the same day, Hoechst agreed to suspend its activities.

125. The documents provided by Hoechst also indicate that it had entered into some kind of an arrangement with an entity described as Mosdorfer GmbH. The nature of the arrangement is not clear to the Panel because Hoechst failed to provide English translations of the documents.

2. Analysis and valuation

126. As evidence of its claim for contract losses, Hoechst provided a copy of the purchase order dated 3 June 1990 along with Appendix A entitled "Price Schedule". It also provided copies of both the facsimiles dated 6 August 1990, first, from Fujikura requesting Hoechst to suspend its activities, and second, from Hoechst wherein it agreed to suspend its activities. The documents provided by Hoechst also indicate that Fujikura agreed to alter certain terms and conditions of the purchase order at its request.

127. Hoechst also provided a list (dated 28 September 1993) of parts and their selling prices, costs and margins. The total margin on all the parts is listed as DEM 987,267, which is the claimed amount. It therefore appears to the Panel that Hoechst is seeking compensation for the loss of margin. Hoechst

did not provide evidence, which would establish that it had commenced work on the contract or that it incurred any costs.

128. The Panel notes that Hoechst did not provide any explanation whatsoever with respect to the nature of its alleged loss, and in its response to the article 34 notification it advised that it had no further information to give. Hoechst was also requested to provide English translations of a number of documents but it failed to provide them. The Panel finds that Hoechst failed to provide sufficient information and evidence to substantiate its claim, and therefore, how it suffered a loss.

3. Recommendation

129. The Panel recommends no compensation for contract losses.

B. Recommendation for Hoechst

Table 8. Recommended compensation for Hoechst

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	632,053	nil
Total	632,053	nil

130. Based on its findings regarding Hoechst's claim, the Panel recommends no compensation.

VII. PIPELINE CONSTRUCTION CO.

131. Pipeline Construction Co. ("Pipeline") is a corporation organised according to the laws of Hungary operating in the construction industry.

132. In the "E" claim form, Pipeline sought compensation in the amount of KWD 1,168,622 (USD 4,043,675) for contract losses, loss of profits, loss of tangible property and loss of income producing property.

133. The claim was originally filed by Chemokomplex Trading Company, a corporation organised according to the laws of Hungary, whose original name was Chemokomplex Foreign Trading Company. By virtue of an assignment agreement dated 10 July 2000, the liquidator of Chemokomplex Trading Company irrevocably assigned all its rights in the claim to Pipeline.

134. The Panel reclassified loss elements of Pipeline's claim for the purposes of this report. The Panel therefore considered the amount of USD 4,043,675 for contract losses, loss of profits and loss of tangible property, as follows:

Table 9. Pipeline's claim

Claim element	Claim amount (USD)
Contract losses	1,197,920
Loss of profits	1,141,869
Loss of tangible property	1,703,886
Total	4,043,675

A. Contract losses

1. Facts and contentions

135. Pipeline seeks compensation in the amount of KWD 346,199 (USD 1,197,920) for contract losses.

136. Pipeline's contract losses arise out of a sub-contract dated 10 June 1989 entered into between Chemokomplex Hungarian Trading Company of Machines and Equipment for the Chemical Industry ("Chemokomplex") and Messrs. Mohammed Abdulmohsin Kharafi Industries and Establishments Company of Kuwait ("Kharafi"). Chemokomplex was later divided into two companies, out of which Chemokomplex Trading Company became the legal successor of one company and inherited the rights to this claim. Pipeline stated that Chemokomplex signed the sub-contract because it did not have any "foreign trading rights" but that it was Pipeline that executed the project works.

137. The sub-contract was for the execution of certain works for Kharafi, which had entered into a contract with the Kuwait Oil Company ("KOC"), for the execution of the "30" diameter strategic gas line project". Pipeline asserts that it completed the project works by 29 July 1990.

138. Pipeline further asserts that the main contract between Kharafi and KOC was "closed" on 31 July 1990, however, because of Iraq's invasion and occupation of Kuwait, its sub-contract with Kharafi could not be "closed" until November 1994. It also stated that the project works were executed both by itself and "Natco" (National Company for Mechanical and Electrical Works, the construction division of Kharafi).

139. Pipeline seeks compensation for unpaid invoices for the months of April, May, June and July 1990. It also seeks compensation for the extra costs incurred in executing certain additional works, and amounts owed to it by Kharafi.

2. Analysis and valuation

140. As evidence of its claim for contract losses, Pipeline provided a copy of the sub-contract along with its special conditions and schedules supporting the original contract price. It also provided amendments to the sub-contract as well as an undated document entitled "Declaration" from Kharafi, which certifies that Pipeline completed its duties under the contract. Correspondence from Kharafi indicating the release of the performance bond has also been submitted. Pipeline also provided copies of various interim payment certificates, and a copy of a completion certificate, which indicates that the works for Segment A were completed on 7 March 1990. A copy of a letter dated 31 July 1990 from KOC indicates that a completion certificate dated 29 July 1990 for Segment B was to be issued by KOC.

141. In the article 34 notification, Pipeline was requested to advise whether either Kharafi or Natco had gone into liquidation, or had been rendered insolvent, bankrupt, or ceased to exist or were otherwise entitled to refuse to pay as a result of Iraq's invasion and occupation of Kuwait. In its reply, Pipeline stated that "neither Kharafi nor Natco has been winded up or ceased". The Panel finds that Pipeline has failed to establish that the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

142. Furthermore, a copy of a letter dated 16 December 1991 from Pipeline to Natco indicates that both Natco and Pipeline had claims against each other. This suggests to the Panel that any amounts that were owed to Pipeline and which remained unpaid were not due to the direct result of Iraq's invasion and occupation of Kuwait. Finally, Pipeline did not explain why Kharafi/Natco did not pay the outstanding amounts in 1994 when the sub-contract was "closed".

3. Recommendation

143. The Panel recommends no compensation for contract losses.

B. Loss of profits

1. Facts and contentions

144. Pipeline seeks compensation in the amount of KWD 330,000 (USD 1,141,869) for the alleged loss of future profits.

145. In its original submission, Pipeline asserted that it had to stop its business activities in Kuwait due to Iraq's invasion and occupation of Kuwait. It asserted that it could not work on the Doha project, which was for a value of KWD 1,500,000. The project works for the Doha project were to commence in September 1990. The second project that Pipeline asserted that it had to abandon was the oil and gas fields station project, which was for a value of KWD 500,000. The project works for the oil and gas fields station project were to commence in August 1990. Pipeline further asserted that due to Iraq's invasion and occupation of Kuwait, it lost its tools, accessories and equipment, which reduced its yearly turnover by KWD 220,000.

146. The claim for loss of future profits is calculated on a yearly turnover of KWD 2,200,000 for three years (from September 1990 to September 1993) at the rate of five per cent.

147. However, in its reply to the article 34 notification, Pipeline did not refer to any of the projects mentioned in its original submission and stated that the contract for the Subiya pipeline project could not be concluded due to Iraq's invasion and occupation of Kuwait. It asserted that this project would have produced an annual turnover of about KWD 2,000,000.

148. The documents provided by Pipeline indicate that in June 1990, Chemokomplex and Kharafi had submitted a tender for the execution of the Subiya pipeline project. Pipeline asserted that the project works were to commence in mid September 1990.

2. Analysis and valuation

149. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17, supra.

150. Pipeline did not provide any evidence which would suggest that it had been awarded the contracts for the Doha project and the oil and gas fields station project. In its reply to the article 34 notification, Pipeline stated that no contract was concluded in respect of the Subiya project because of Iraq's invasion and occupation of Kuwait.

151. For a loss of profits claim, the Panel requires that a claimant must establish that the continuation of the contractual relationship that existed on 2 August 1990 was rendered impossible by Iraq's invasion and occupation of Kuwait. In this case, Pipeline was not working on any project as at 2 August 1990. The Panel finds that the claim for loss of future profits is speculative and unsupported.

3. Recommendation

152. The Panel recommends no compensation for loss of profits.

C. Loss of tangible property

1. Facts and contentions

153. Pipeline seeks compensation for loss of tangible property in the amount of KWD 492,423 (USD 1,703,886), which includes KWD 472,725 for the loss of equipment and machinery; KWD 5,730 for the loss of tools and accessories; and KWD 13,968 for the loss of "furniture and suites".

154. Pipeline asserted that prior to the departure of its personnel from Kuwait on 19 August 1990, it had stored part of its tangible property at the Kharafi site office near East Ahamadi area in Kuwait and the remainder at a rented house in Salwa area in Kuwait City. On 10 August 1991, when Pipeline visited Kuwait, it found all its property was missing from both the locations.

(a) Equipment and machinery

155. Pipeline seeks compensation in the amount of KWD 472,725 for the loss of equipment and machinery. Most of the equipment and machinery was imported into Kuwait and some was purchased locally in Kuwait.

(b) Tools and accessories

156. Pipeline seeks compensation in the amount of KWD 5,730 for the loss of tools and accessories.

(c) "Furniture and suites"

157. Pipeline seeks compensation in the amount of KWD 13,968 for the loss of "furniture and suites".

2. Analysis and valuation

(a) Equipment and machinery

158. In support of its claim for equipment and machinery that was imported into Kuwait, Pipeline provided a schedule dated 26 November 1991, which contains the description of 89 items. It also contains the identification numbers, the chassis numbers, the engine numbers, the "bayan numbers", the date of arrival and the value in Kuwaiti dinars. The "bayan" appears to be a document issued by the customs authorities of Kuwait. Pipeline also provided copies of the "bayans" and a specimen form has been translated. On the other "bayans", Pipeline noted the item numbers, the "bayan" numbers and the description of the goods in English.

159. Pipeline also provided copies of invoices issued by it for the purpose of exporting the goods. An inventory list dated 30 June 1990 has also been provided. A letter dated 14 August 1991 from Kharafi indicates that Pipeline had stored its tangible property in Kuwait prior to its departure and it was found missing when Pipeline returned to Kuwait in August 1991.

160. In relation to the equipment and machinery that was purchased locally in Kuwait, Pipeline provided copies of the original invoices, which indicate that the items had been in use for approximately one year. Some, but not all, of the invoices had been translated into English.

161. The Panel finds that Pipeline provided sufficient evidence of its title to or right to use, and the presence in Kuwait of, the items of tangible property. The Panel further finds that Pipeline suffered the alleged loss as a direct result of Iraq's invasion and occupation of Kuwait.

162. With respect to the equipment and machinery imported into Kuwait, the Panel noted that Pipeline failed to provide evidence of the age and the condition of the tangible property at the time of its importation. In valuing the loss, the Panel excluded certain items because, due to the nature of those items, they would have been written off or scrapped at the end of the contract. For the remaining items, which could be verified against the invoices supplied, the Panel applied depreciation rates appropriate for such items and concluded that the items had a residual value of USD 19,692 as at 2 August 1990.

163. In valuing the loss for the items purchased locally in Kuwait, the Panel considered only those items from the invoices which were stated in English. The Panel applied depreciation rates appropriate for such items and concluded that the items had a residual value of USD 5,699 as at 2 August 1990.

(b) Tools and accessories

164. In support of its claim for loss of tools and accessories, Pipeline provided a schedule detailing the description of the goods, a copy of one invoice and "bayan" numbers, the quantity and the value. It also provided the copies of the "bayans".

165. Pipeline provided the invoice numbers for four invoices however, a copy of only one invoice was submitted, which was not translated into English. This invoice appears to relate to a group shipment and no packing list has been provided. The Panel finds that Pipeline failed to provide sufficient evidence for valuation purposes. The Panel recommends no compensation for tools and accessories.

(c) "Furniture and suites"

166. In support of its claim for loss of "furniture and suites", Pipeline provided a schedule detailing the description of the goods, the quantity and the value. These items (for example refrigerators, televisions, washing machines and furniture) were locally purchased in Kuwait. Pipeline provided copies of the original invoices. Some of the invoices were partially translated and the others had not been translated. These invoices indicate that the items were purchased in 1989. Pipeline also provided a copy of an inventory list dated 30 June 1990.

167. The Panel finds that Pipeline provided sufficient evidence of its title to or right to use, and the presence in Kuwait of, the items purchased locally in Kuwait. The Panel further finds that Pipeline suffered the alleged loss as a direct result of Iraq's invasion and occupation of Kuwait.

168. In valuing the loss, the Panel considered only those items from the invoices, which were stated in English. The Panel applied depreciation rates appropriate for such items and concluded that the items had a residual value of USD 5,173 as at 2 August 1990.

3. Recommendation

169. The Panel recommends compensation in the amount of USD 30,564 for loss of tangible property.

D. Recommendation for Pipeline

Table 10. Recommended compensation for Pipeline

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	1,197,920	nil
Loss of profits	1,141,869	nil
Loss of tangible property	1,703,886	30,564
Total	4,043,675	30,564

170. Based on its findings regarding Pipeline's claim, the Panel recommends compensation in the amount of USD 30,564. The Panel finds the date of loss to be 20 August 1990.

VIII. FUJIKURA LTD.

171. Fujikura Ltd. ("Fujikura") is a corporation organised according to the laws of Japan operating in the construction industry.

172. In the "E" claim form, Fujikura sought compensation in the amount of USD 7,592,124 for contract losses, payment or relief to others and losses related to business transaction or course of dealing. The original claim was denominated in Pounds sterling, Deutsche Mark, Kuwaiti dinar, Baht, and Yen. Fujikura appears to have made a calculation error because using the exchange rates provided by Fujikura, the claimed amount should be USD 7,602,564. The Panel has corrected this error and considered the amount of USD 7,602,564.

Table 11. Fujikura's claim

Claim element	Claim amount (USD)
Contract losses	19,646
Payment or relief to others	65,845
Business transaction or course of dealing	7,517,073
Total	7,602,564

A. Contract losses

1. Facts and contentions

173. Fujikura seeks compensation in the amount of USD 19,646 for contract losses.

174. In 1989, Fujikura entered into a contract with the Ministry of Electricity and Water of Kuwait (the "Ministry") for the supply of "132/33/11 KV overhead transmission lines (Contract No. MEW/ENPT 2091-89/90)". The project works were allegedly suspended due to Iraq's invasion and occupation of Kuwait. Fujikura asserted that after the liberation of Kuwait, it discussed the possibility of the resumption of the project works with the Ministry; however, the project works were eventually terminated "because of possible existence of land mines on the route".

175. The nature of the alleged contract loss is not clear to the Panel. However, from the documents provided by Fujikura, it appears to the Panel that Fujikura is seeking compensation for losses suffered by Bowthorpe EMP Limited ("Bowthorpe"), a company which appears to be incorporated in the United Kingdom. It also appears that Bowthorpe was a sub-contractor of Fujikura.

2. Analysis and valuation

176. As evidence of its claim for contract losses, Fujikura provided a copy of a facsimile dated 9 December 1992 from Bowthorpe. In this facsimile Bowthorpe indicated that it was completing the category "E" claim form at the request of Fujikura, and that its losses in the amount of 13,159 Pounds sterling were suffered due to the cancellation of the contract. Bowthorpe also indicated that by

completing the category "E" claim form, it was helping Fujikura; however, its claim was against Fujikura. Fujikura also provided a copy of a category "E" claim form completed by Bowthorpe. Fujikura also asserted that most of its documents were destroyed in Kuwait and that it had compensated some of its sub-contractors, but was unable to locate the settlement agreements.

177. The Panel finds that Fujikura did not explain the exact nature of its alleged loss nor did it provide sufficient evidence to demonstrate that it suffered the alleged loss.

3. Recommendation

178. The Panel recommends no compensation for contract losses.

B. Payment or relief to others

1. Facts and contentions

179. Fujikura seeks compensation in the amount of USD 65,845 for payment or relief to others.

180. The documents provided by Fujikura indicate that the Government of Thailand paid the amount of 1,684,007 Baht (THB) for the repatriation of 51 Thai workers working for Fujikura in Kuwait. An English translation of a letter dated 11 December 1992 from the Labour Skill Development Department of Thailand indicates that Fujikura reimbursed the Government of Thailand by issuing a cheque dated 30 November 1992 in the amount of THB 1,684,007. Fujikura therefore seeks compensation in the amount of THB 1,684,007.

2. Analysis and valuation

181. In support of its claim for payment or relief to others, Fujikura provided a copy of a letter dated 16 October 1992 from the Thai Embassy in Tokyo. The Thai Embassy requested Fujikura to reimburse the Thai Government for the expenses incurred in evacuating 51 of its Thai employees from Kuwait. It also provided an English translation of a letter dated 11 December 1992 from the Labour Skill Development Department of Thailand, and a list containing the names of the 51 employees along with their job designation and passport numbers.

182. Fujikura also provided a sample copy of an employment agreement dated 23 April 1990. According to this agreement, except in certain specified circumstances, Fujikura was responsible for payment of transportation charges from the "point of origin to the site of work, and upon completion of employment, return transportation to the point of origin". In the article 34 notification, Fujikura was requested to explain how the costs claimed exceeded the costs that it would have incurred in repatriating its employees upon completion of the work in Kuwait. Fujikura did not reply to the article 34 notification.

183. In the absence of any evidence to the contrary, the Panel finds that Fujikura failed to provide sufficient evidence to substantiate its claim, and therefore, how it suffered a loss.

3. Recommendation

184. The Panel recommends no compensation for payment or relief to others.

C. Business transaction or course of dealing

1. Facts and contentions

185. Fujikura seeks compensation in the amount of USD 7,517,073 for losses related to business transaction or course of dealing. From the limited information provided in the Statement of Claim, it appears to the Panel that Fujikura is seeking compensation for losses suffered by the following four sub-contractors:

(a) Ceram-Rheinisch-Westfalische Isolatoren-Werke GmbH (RWI), a company which appears to be incorporated in Germany, with a claim for DEM 66,877 (USD 38,173);

(b) Kun Hwa Co. Ltd., a company which appears to be incorporated in the Republic of Korea, with a claim for USD 10,440;

(c) Mechanical & Electrical Engineering Co., a company which appears to be incorporated in Jordan, with a claim for KWD 954,896 (USD 3,206,445). This claim is for loss of tangible property and loss of profits; and

(d) Hyundai Steel Tower Industries Company Limited, a company which appears to be incorporated in the Republic of Korea, with a claim for USD 1,161,530.

186. In addition to the claims submitted on behalf of its sub-contractors, Fujikura also seeks compensation in the amount of 348,369,062 Yen (JPY) (USD 3,100,485) for its own losses. The losses relate to expenses incurred on "materials, payment to other sub-contractors, machinery on lease and mobilisation". Fujikura did not provide any other information or explanation.

2. Analysis and valuation

187. In support of its claim for losses related to business transaction and course of dealing, Fujikura provided copies of category "E" claim forms completed by the four sub-contractors. It also provided copies of some correspondence from its sub-contractors. Fujikura did not provide any other evidence in support of its claim for the losses suffered by its sub-contractors. Fujikura also did not provide any evidence in support of its alleged losses in the amount of JPY 348,369,062. In the article 34 notification, Fujikura was requested to provide additional information and evidence in support of its claim for losses related to business transaction or course of dealing. Fujikura did not reply to the article 34 notification.

188. The Panel finds that Fujikura failed to describe the nature of its alleged losses. It also failed to provide sufficient evidence to substantiate its claim, and therefore, how it suffered a loss.

3. Recommendation

189. The Panel recommends no compensation for losses related to business transaction or course of dealing.

D. Recommendation for Fujikura

Table 12. Recommended compensation for Fujikura

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	19,646	nil
Payment or relief to others	65,845	nil
Business transaction or course of dealing	7,517,073	nil
Total	7,602,564	nil

190. Based on its findings regarding Fujikura's claim, the Panel recommends no compensation.

IX. ABB RELAYS AG

191. ABB Relays AG ("ABB Relays") is a corporation organised according to the laws of Switzerland operating in the construction industry.

192. In the "E" claim form, ABB Relays sought compensation in the amount of 45,133 Swiss francs (CHF) (USD 34,933) for contract losses, and interest at the rate of 8 per cent per annum from the date of loss until the "date of indemnification". The Panel has reclassified the contract loss element as payment or relief to others for the purposes of this report.

193. ABB Relays is a subsidiary of ABB Asea Brown Boveri Ltd. A merger between Brown Boveri & Company Limited of Switzerland ("BBC") and ASEA AB of Sweden formed ABB Asea Brown Boveri Ltd.

Table 13. ABB Relays' claim

Claim element	Claim amount (USD)
Payment or relief to others	34,933
Interest (no amount specified)	(--)
Total	34,933

A. Payment or relief to others

1. Facts and contentions

194. ABB Relays seeks compensation in the amount of USD 34,933 for payment or relief to others. ABB Relays asserted that as at 2 August 1990, it was working on various projects for the Ministry of Electricity and Water of Kuwait (the "Ministry"). To assist ABB Relays in discharging its contractual obligations, Brown Boveri Electrical Co. of Kuwait, a subsidiary of BBC, entered into an employment agreement with an expatriate electrical engineer (the "employee"), to be based in Kuwait.

195. BBC also entered into a supplemental agreement with the employee and offered him additional benefits payable in accordance with the Swiss law. By virtue of an assignment agreement dated 27 August 1993, BBC assigned all its rights, title and interest arising from the supplemental agreement to ABB Relays.

196. ABB Relays asserted that the employee was taken hostage by "Iraq" and was detained against his will from 28 August to 30 November 1990. ABB Relays therefore seeks compensation for the salary and benefits paid to the employee while he was detained in Iraq.

2. Analysis and valuation

197. As evidence of its claim for payment or relief to others, ABB Relays provided a copy of the employment agreement, the supplemental agreement along with the amendments, the assignment

agreement and salary statements. A cross-check undertaken by the secretariat to find overlapping claims showed that the employee had filed a category "C" claim with the Commission. The documents attached with that submission indicate that the employee was captured by the Iraqi army on 28 August 1990 and taken to Iraq on 30 August 1990. He also provided his Kuwaiti residency number, passport number, and copies of his driving license and identification card, which were issued in Kuwait. The Panel notes that there is no overlap between the claims filed by the employee and ABB Relays.

198. The Panel finds that the employee was in Kuwait during the relevant period and was detained on 28 August 1990. ABB Relays stated that the employee was released on 30 November 1990. Even though the employee was detained for a period of three months, ABB Relays is seeking compensation for a period of six months. In the article 34 notification, ABB Relays was requested to clarify this discrepancy. In its reply, ABB Relays asserted that the employment agreement with the employee was for a period of six months from 1 July to 31 December 1990.

199. In its reply, ABB Relays also provided the breakdown of the claimed amount. It asserted that the amount of CHF 34,458 was paid as salary and benefits to the employee. With respect to the balance of CHF 10,675, ABB Relays asserted that CHF 3,000 was for salary for the month of August 1990; CHF 7,075 was compensation for overtime; and CHF 600 for travel costs.

200. With respect to its claim for CHF 3,000 relating to salary for the month of August 1990, ABB Relays did not provide any explanation as to what kind of productive work the employee was doing in the month of August 1990 prior to his detention on 28 August 1990, or how the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait. The basis for the claim relating to overtime payments in the amount of CHF 7,075 is not clear because the employee was held hostage and was unproductive. If the overtime payment relates to work done by the employee after his release, in that case, it would appear that the employee was productive. Therefore, ABB Relays has failed to explain how the overtime payments were incurred as a direct result of Iraq's invasion and occupation of Kuwait. With respect to its claim for CHF 600, ABB Relays did not provide any explanation related to the departure of the employee from Iraq. Pursuant to article 8 of the employment agreement, at the termination of his contract, the employee was entitled to air tickets for himself and his family to any destination in Switzerland or Italy. ABB Relays did not explain where the employee went and how the expenses incurred were greater than those it would have incurred on the termination of the employee's contract. For the above stated reasons, the Panel recommends no compensation for salary for the month of August and overtime payments.

201. With respect to the salary and benefits paid to the employee while he was unproductive during his detention, the Panel finds that this portion of the claim is compensable in principle. In this case, the employee was unproductive from 28 August 1990 until his release on 30 November 1990. ABB Relays did not explain what the employee did after his release. The Panel therefore recommends compensation for the salary and benefits paid to the employee for the months of September to November 1990. Specifically, the Panel recommends compensation in the amount of CHF 21,710 (USD 16,804) (being three months of the local salary of CHF 3,820 per month; payments in

Switzerland of CHF 3,000 per month; and pension fund and health insurance contributions of CHF 5,000 per annum applied proportionately to the three month period of detention).

3. Recommendation

202. The Panel recommends compensation in the amount of USD 16,804 for payment or relief to others.

B. Interest

203. With reference to the issue of interest, the Panel refers to paragraphs 19 and 20, supra, of this report.

C. Recommendation for ABB Relays

Table 14. Recommended compensation for ABB Relays

Claim element	Claim amount (USD)	Recommended compensation (USD)
Payment or relief to others	34,933	16,804
Interest (no amount specified)	(--)	(--)
Total	34,933	16,804

204. Based on its findings regarding ABB Relays' claim, the Panel recommends compensation in the amount of USD 16,804. The Panel finds the date of loss to be 15 October 1990, which is the mid-point of the employee's three month detention.

X. ABB MANAGEMENT (ARABIA) LTD.

205. ABB Management (Arabia) Ltd. ("ABB Management") is a corporation organised according to the laws of Switzerland operating in the construction industry.

206. In its original submission, ABB Management sought compensation in the amount of CHF 62,425 for contract losses, CHF 30,000 for real property losses, and interest at the rate of 8 per cent per annum from the date of loss until the "date of indemnification". In a letter dated 24 November 2000, ABB Management advised that it had made an arithmetical error in the calculation of the amount for contract losses. It corrected the error and reduced its contract loss claim to CHF 57,540. For the reasons stated in paragraph 8, supra, the Panel has considered the claim in the amount of CHF 87,540 (USD 67,755).

207. The Panel reclassified loss elements of ABB Management's claim for the purposes of this report. The Panel therefore considered the amount of USD 67,755 for payment or relief to others, as follows:

Table 15. ABB Management's claim

Claim element	Claim amount (USD)
Payment or relief to others	67,755
Interest (no amount specified)	(--)
Total	67,755

A. Payment or relief to others

1. Facts and contentions

208. ABB Management seeks compensation in the amount of CHF 87,540 (USD 67,755) for payment or relief to others. ABB Management asserted that as at 2 August 1990, it was executing projects for the Ministry of Electricity and Water and the Ministry of Information of Kuwait. It further asserted that an expatriate employee (the "employee") was its General Manager in Kuwait.

209. Brown Boveri & Company Limited ("BBC") entered into a supplementary agreement dated 5 February 1985 with the employee, pursuant to which additional benefits were given to the employee to facilitate his stay in Kuwait. By virtue of an assignment agreement dated 27 August 1993, BBC assigned all its rights, title and interest arising from the supplementary agreement to ABB Management.

210. ABB Management asserted that shortly prior to Iraq's invasion and occupation of Kuwait the employee left Kuwait and did not return. It contended that the employee was unable to return to Kuwait and remained unproductive until he was transferred to Morocco on 1 December 1990. ABB Management therefore seeks compensation in the amount of CHF 57,540 for salary paid to the employee for a period of four months.

211. In addition, ABB Management seeks compensation in the amount of CHF 30,000. It asserted that it paid this amount to the employee as compensation for the loss of his personal goods, which were left in Kuwait. The original claim relating to the employee was for an amount of CHF 54,525 however, ABB Management reduced the claim to CHF 30,000 to account for depreciation.

2. Analysis and valuation

212. In support of its claim for salary paid to the employee, ABB Management provided a copy of the supplementary agreement and salary statements. In the article 34 notification, it was requested to provide the employee identification number, the Kuwaiti civil identification number and the passport number with issuing country. In its reply, it stated that the requested information and documents were no longer available and that the employee had passed away.

213. ABB Management stated that the employee left Kuwait prior to Iraq's invasion and occupation of Kuwait and did not return after the invasion. It further asserted that it continued to pay salary to the employee even though he was not performing his duties in Kuwait because it was not possible to "reassign on temporary basis as no vacancy (existed) at that time. Apart from that, the time period of the war was not known".

214. The Panel notes that during the four months when the employee was alleged to have been unproductive, he was not in Kuwait nor was he taken hostage by the Iraqi army. There is no evidence to suggest that the employee remained unproductive as a direct result of Iraq's invasion and occupation of Kuwait. Indeed, ABB Management stated that it could not reassign the employee on a temporary basis because there was no vacancy. The Panel therefore finds that ABB Management failed to establish that the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

215. In support of its claim for compensation paid to the employee in the amount of CHF 30,000, ABB Management provided a copy of a hand written list, which describes the lost items and their costs. It also provided a copy of a payment order dated 29 October 1990 requesting the Union Bank of Switzerland to transfer the amount of CHF 30,000 to the employee's account.

216. In the article 34 notification, ABB Management was requested to provide evidence, which would establish that the employee owned the lost items and that they were in Kuwait during the relevant period. In its reply, it stated that "no such evidence (was) available". The Panel finds that ABB Management failed to provide sufficient evidence to establish that the lost items were owned by the employee or were in Kuwait during the relevant period.

3. Recommendation

217. The Panel recommends no compensation for payment or relief to others.

B. Interest

218. As the Panel recommends no compensation, there is no need for the Panel to determine the date of loss from which interest would accrue.

C. Recommendation for ABB Management

Table 16. Recommended compensation for ABB Management

Claim element	Claim amount (USD)	Recommended compensation (USD)
Payment or relief to others	67,755	nil
Interest (no amount specified)	(--)	nil
Total	67,755	nil

219. Based on its findings regarding ABB Management's claim, the Panel recommends no compensation.

XI. EASTERN LIMITED

220. Eastern Limited ("Eastern") is a corporation organised according to the laws of the United Arab Emirates operating in the construction industry.

221. In the "E" claim form, Eastern sought compensation in the amount of USD 8,441,451 for contract losses, loss of real property, loss of tangible property, losses related to business transaction or course of dealing, loss of income producing property, payment or relief to others, and compensation for what it describes as "profit for projects in hand, and future profits on contracts".

222. In its reply to the article 34 notification, Eastern clarified that the amount claimed for payment or relief to others on the category "E" claim form (USD 235,000) contained a calculation error. It asserted that the sum total of all the expenses related to payment or relief to others is USD 335,000 and not USD 235,000. The Panel confirms that Eastern did make a mistake in the calculation of its claim for payment or relief to others. The Panel has therefore considered the claim for payment or relief to others in the amount of USD 335,000. As a result of this correction, the total claimed amount has changed to USD 8,541,451.

223. The Panel reclassified the loss elements included in Eastern's claim for the purposes of this report. The Panel therefore considered the amount of USD 8,541,451 for contract losses, loss of profits, loss of tangible property, payment or relief to others, financial losses, and other losses, as follows:

Table 17. Eastern's claim

Claim element	Claim amount (USD)
Contract losses	1,130,410
Loss of profits	5,494,256
Loss of tangible property	826,780
Payment or relief to others	335,000
Financial losses	305,005
Other losses	450,000
Total	8,541,451

A. Contract losses

1. Facts and contentions

224. Eastern seeks compensation in the amount of USD 1,130,410 for contract losses.

225. Eastern asserted that it established its branch office in Iraq in 1981 and executed many projects in Iraq until Iraq's invasion and occupation of Kuwait. It further asserted that it continued to perform work during the war between Iran and Iraq and, after the cessation of hostilities, it reorganised itself to participate in the execution of large scale specialised projects in Iraq. However, due to Iraq's invasion and occupation of Kuwait, it demobilised all its employees and terminated all its operations in Iraq, as a result of which it alleged that it suffered heavy losses.

226. The contract losses suffered by Eastern relate to many contracts, which it asserted were executed for various Iraqi "State Organizations" and "Ministry of Local Governments".

227. Eastern asserted that the State Organization for Technical Industries ("SOTI") dealt with projects for Development & Military Industries. Saad General Establishment was the project wing, and Al-Hutteen was the production wing, of SOTI. In 1988, SOTI was renamed "Military Industries Establishment" and Saad General Establishment was renamed "Al-Fao General Establishment." Eastern stated that it completed many projects for all the above organizations, which were considered as "priority projects". Eastern seeks compensation for unpaid amounts related to the following projects, which it executed for SOTI and other related organizations:

(a) Projects I 21 – I 23 and I 25 – I 27

228. Projects I21 – I23 and I25 - I27 were for the construction of air raid shelters at various locations in Iraq. Eastern seeks compensation in the amount of USD 265,896 for unpaid retention monies, which it alleged remained unpaid as a result of Iraq's invasion and occupation of Kuwait.

(b) Project I 28

229. Project I 28 was for the "design & erection of Steam Pipeline Network". Eastern seeks compensation in the amounts of USD 128,702 for what it describes as "deferred payment of work done, being overdue for payment"; USD 7,971 for unpaid retention monies; and USD 7,971 and USD 29,278 for what it describes as "security deposit amount with client in lieu of performance bond".

(c) Project I 29

230. Project I 29 was for the "erection of steam water condensate & compressed air piping in workshop". Eastern seeks compensation in the amounts of USD 6,651 (foreign currency portion) and USD 9,976 (local currency portion) related to unpaid final bill; USD 5,965 for unpaid retention monies; and USD 6,198 for what it describes as "payment for certain amount from previous bill is outstanding".

(d) Project I 31

231. Project I 31 was for the erection of "chilled water piping" for Al-Fao Establishment. Eastern seeks compensation in the amount of USD 66,546 related to 35 per cent of the unpaid amount of the final bill. Eastern did not explain why only 35 per cent of the amount of the final bill remained unpaid.

(e) Project T-001

232. Project T-001 was for the supply of "Ductile Iron Pipe & Fittings" to Al Bader State Establishment of Iraq. Eastern seeks compensation in the amount of USD 102,861 for unpaid amounts. 60 per cent of the amount was to be paid on the presentation of shipping documents and the balance of 40 per cent on 4 July 1990. Eastern's claim is for the balance of 40 per cent, which it alleged, remained unpaid. Eastern did not explain why the outstanding amount was not paid on 4 July 1990.

(f) Project T-008

233. Project T-008 was for the supply of "PVC Pipes & Fittings" to Al Fao General Establishment of Iraq. Eastern seeks compensation in the amount of USD 12,736 for unpaid amounts. An irrevocable letter of credit dated 25 April 1990 was established by the Central Bank of Iraq in favour of Eastern. The letter of credit was valid until 15 June 1990 and required the goods to be sent to Iraq by truck not later than 25 May 1990.

234. Eastern sent the goods on 26 June 1990. Thereafter, it submitted the documents to the National Bank of Sharjah for payment. In its letter dated 11 July 1990, the National Bank of Sharjah notified Eastern that it had noted eight discrepancies. On 16 July 1990, Eastern requested the National Bank of Sharjah to forward all the documents to the Central Bank of Iraq, as Eastern could not rectify all the noted discrepancies.

(g) Project T-009

235. Project T-009 was for the supply of "Ductile Iron Pipe & Fittings" to Al Bader State Establishment of Iraq. Eastern seeks compensation in the amount of USD 29,670 for unpaid amounts.

236. On 26 March 1990, Rasheed Bank opened a letter of credit in favour of Eastern. According to the terms of the letter of credit, the goods had to be sent to Iraq via airfreight not later than 8 June 1990. The letter of credit was valid until 8 June 1990. The documents provided by Eastern indicate that it sent the goods on 26 June 1990. Eastern did not explain why it shipped the goods after the letter of credit had expired nor did it explain the steps it took to recover the money from Al Bader State Establishment.

(h) Project I 24

237. Eastern asserted that it completed a water storage and distribution project for the Ministry of Local Government, General Establishment for Water and Sewage of Iraq, at Sadat-Al-Hindiya in Iraq. It seeks compensation in the amount of USD 449,989, which includes USD 272,896 for unpaid retention monies, and USD 177,093 for three outstanding promissory notes.

2. Analysis and valuation

238. The Panel has defined the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

239. The underlying evidence provided by Eastern, including its own assertions, indicate to the Panel that for the purposes of the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991), Eastern had, in each case, a contract with Iraq.

(a) Projects I 21 – I 23 and I 25 – I 27

240. Eastern did not provide copies of the contracts or evidence of the dates of performance. However, it provided copies of letters from the Iraqi employers, which indicate that the unpaid retention monies were due to Eastern as of 31 December 1989. One letter was issued in February 1990 and the remaining letters were issued in January 1990. As the amounts were due from 31 December 1989, it appears to the Panel that the outstanding amounts relate to performance that was performed prior to 2 May 1990.

241. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

(b) Project I 28

242. In support of its claim for "deferred payment of work done, being overdue for payment", Eastern provided copies of correspondence addressed to the Rafidain Bank, shipping documents, certificates of origin and truck consignment notes. The documents provided by Eastern indicate that the unpaid amounts relate to goods that were shipped to Hutteen General Establishment of Iraq in 1988 and the amounts were due and payable in 1989. In this case, the goods were shipped to Iraq prior to 2 May 1990.

243. In support of its claim for unpaid retention monies, Eastern provided an English translation of a copy of letter dated 31 January 1989 from the Ministry of Military Industry and Manufacture, Military Manufacturing Organization, Hutteen General Establishment. This letter indicates that the balance of unpaid retention monies as of 31 December 1989 was IQD 2,484. It therefore appears to the Panel that the unpaid amounts relate to performance that was performed prior to 2 May 1990.

244. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

245. In support of its claim for "security deposit amount with client in lieu of performance bond", Eastern provided a copy of a letter dated 31 January 1989 from Hutteen General Establishment. This letter confirms the balance of the deposit in the amount of IQD 2,484 (USD 7,971). Eastern did not explain why the deposit was not released in 1989. It also provided a copy of a letter dated 4 March

1991 from the United Bank Limited of Abu Dhabi, which shows that the United Bank Limited had a lien on the deposits in Eastern's account as a security for the letter of guarantee in the amount of USD 29,278. Eastern did not provide the date when the project works were completed or the date when the letter of guarantee should have been released. It also did not provide a copy of the contract. The Panel finds that Eastern failed to provide sufficient evidence to show that the non-release of the deposit and the letter of guarantee was the direct result of Iraq's invasion and occupation of Kuwait. The Panel recommends no compensation.

(c) Project I 29

246. In support of its claim for USD 6,651 (foreign currency portion) and USD 9,976 (local currency portion) related to unpaid final bills, Eastern provided copies of both the bills. These bills appear to have been issued for work that was performed in June 1990. These amounts are therefore within the jurisdiction of the Commission. However, Eastern did not provide a copy of the contract or any other details relating to the project. It did not provide other evidence, which would establish that the employer had accepted the bills or that the employer's site engineer had approved them.

247. With respect to its claim for unpaid retention monies and for what it describes as "payment for certain amount from previous bill is outstanding", Eastern did not provide any information or evidence, which would establish that the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait or that it suffered the alleged loss.

248. The Panel recommends no compensation.

(d) Project I 31

249. Eastern did not provide a copy of the contract or the dates of performance. However, it provided an undated copy of the final bill. It also provided a copy of a covering letter dated 9 September 1989, which it sent to the employer with the final bill. In this letter, Eastern requested the employer to arrange for payment of the final bill at the earliest. In the absence of any evidence to the contrary, the covering letter dated 9 September 1989 indicates to the Panel that the performance related to the amounts owed from the final bill was performed prior to 2 May 1990.

250. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

(e) Project T-001

251. In support of its claim for USD 102,861, Eastern provided copies of correspondence exchanged with the Rafidain Bank, the invoices, certificates of origin and the truck consignment notes. The evidence provided indicates that the goods were shipped on 18 July and 2 September 1989, respectively. In this case, the goods were shipped prior to 2 May 1990.

252. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

(f) Project T-008

253. In support of its claim for USD 12,736, Eastern provided a copy of the irrevocable letter of credit, the shipping documents, the invoice and correspondence exchanged with the National Bank of Sharjah.

254. In this case, Eastern sent the goods to Iraq on 26 June 1990, whereas the letter of credit was only valid until 15 June 1990 and specifically required the goods to be sent not later than 25 May 1990. The Panel notes that Eastern was not paid because it had failed to comply with the terms of the letter of credit. The Panel finds that Eastern has failed to establish that the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait. The Panel recommends no compensation.

(g) Project T-009

255. In support of its claim for USD 29,670, Eastern provided a copy of the irrevocable letter of credit, the shipping documents, the invoice and correspondence with the Rafidain Bank.

256. In this case, the goods were shipped on 26 June 1990, however, pursuant to the terms of the letter of credit, the goods should have been shipped by 8 June 1990, the date when the letter of credit was to expire. The letter of credit was no longer valid at the time Eastern shipped the goods and there is no evidence to indicate that the letter of credit was extended. The Panel therefore finds that Eastern failed to establish that it was entitled to receive its payments under the letter of credit. The Panel finds that Eastern has failed to establish that the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait. The Panel recommends no compensation.

(h) Project I-24

257. In support of its claim for USD 449,989, Eastern provided a copy of a letter dated 25 January 1990, which confirmed that the amount of unpaid retention monies was due to Eastern as of 21 December 1987. It also provided copies of the outstanding promissory notes, which were issued by the employer in 1986 and were due for payment in 1989. The Panel finds that the unpaid amounts relate to performance that was performed prior to 2 May 1990.

258. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

3. Recommendation

259. The Panel recommends no compensation for contract losses.

B. Loss of profits

1. Facts and contentions

260. Eastern seeks compensation in the amount of USD 5,494,256 for loss of profits. The claim is divided into two parts, as follows:

(a) Projects in hand

261. Eastern seeks compensation in the amount of USD 494,256 for loss of profits on projects, which it was working on at the time of Iraq's invasion and occupation of Kuwait. Eastern did not state the length of time for which it was claiming loss of profits. It has calculated loss of profits at the rate of 25 per cent of the total value of all the projects (i.e. USD 1,977,023).

(b) Projects expected to be awarded

262. Eastern seeks compensation in the amount of USD 5,000,000 for loss of profits on projects, which it expected would be awarded to it. Eastern asserted that there were many big projects, which the relevant authorities had verbally agreed to award to it and that it was waiting for the formal award of the contracts. Eastern asserted that it would have obtained contracts for a total value of USD 100,000,000, and that it was confident of achieving an overall profit rate of 5 per cent on all the contracts.

2. Analysis and valuation

263. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17, supra.

(a) Projects in hand

264. In support of its claim for loss of profits, Eastern provided copies of some contracts. For instance, for the supply contracts, it provided copies of letters of credits and for the remaining contracts, it provided correspondence from its branch office in Baghdad to the head office in Sharjah, which only indicates the name of the employer and the contract value.

265. For its branch office in Iraq, Eastern provided audited financial statements as at 30 June 1987, 30 June 1988, 30 June 1989 and 31 December 1989. These accounts indicate that Eastern had sustained losses in the years 1988 and 1989. However, for the six months ended 31 December 1989, Eastern did make a profit. The accounts showing a profit for the six months ended 31 December 1989 only took account of projects that had been implemented and not the projects that were in progress. The accounts provided by Eastern do not indicate that Eastern consistently made profits in Iraq.

266. Eastern did not provide budgets, management reports, turnover, progress reports, original bids, finance costs and head office costs, and a breakdown of revenues and costs, actual and projected, for the projects. It also failed to provide evidence, which would demonstrate that the projects proceeded as planned. For example, it failed to provide monthly/periodic reports, planned/actual time schedules,

interim certificates or account invoices, details of work that was completed, but not invoiced, details of payments made by the employer and evidence of retention amounts that were recovered.

267. The Panel finds that Eastern's claim for loss of profits is unsupported because it failed to provide sufficient evidence to demonstrate that the contracts on which it was working would have been profitable. The Panel recommends no compensation.

(b) Projects expected to be awarded

268. In support of its claim for loss of profits, Eastern provided affidavits from its chairman, and from a manager at the head office in Sharjah.

269. For a loss of profits claim, the Panel requires that a claimant must establish that the continuation of the contractual relationship that existed on 2 August 1990 was rendered impossible by Iraq's invasion and occupation of Kuwait. In this case, Eastern was hoping that projects would be awarded to it. The Panel finds that the claim is speculative because the claim is not based on any contract on which Eastern was working. The Panel recommends no compensation.

3. Recommendation

270. The Panel recommends no compensation for loss of profits.

C. Loss of tangible property

1. Facts and contentions

271. Eastern seeks compensation in the amount of USD 826,780 for loss of tangible property. Eastern asserted that it had to leave all its tangible property behind when it departed from Iraq on 16 August 1990 and that the Government of Iraq seized its assets in September 1990.

272. The claim is for the loss of caravans, machinery and construction equipment, vehicles, furniture and office equipment. Eastern asserted that as per the audited accounts for the year-end 31 December 1989, the total value of its assets was USD 1,068,747. Eastern further asserted that between 1 January and 31 July 1990, it purchased a Mazda car for USD 10,041 and a computer system for USD 23,585. Accordingly, the total value of assets which it alleged to have left in Iraq was USD 1,102,373 (USD 1,068,747 + USD 10,041 + USD 23,585). Eastern is seeking compensation for 75 per cent of the total value of the assets.

2. Analysis and valuation

273. As evidence of its claim for loss of tangible property, Eastern provided an internally generated document entitled Schedule of Fixed Assets dated 31 December 1989. It also provided affidavits from its employees and audited financial statements. For the Mazda car, Eastern provided an invoice, which indicates that the car was purchased in Sharjah. With respect to the other assets, Eastern did not provide evidence such as certificates of title, receipts, purchase invoices, bills of lading, insurance documents, customs records, inventory lists, asset registers, hire purchase or lease agreements,

transportation documents and other relevant documents generated prior to 2 August 1990. The Panel notes that Eastern asserted that it left all its documents in Iraq.

274. The Panel finds that Eastern failed to provide sufficient evidence of its right to or title to use the property or that the property alleged to have been lost or destroyed was in Iraq during the relevant period.

3. Recommendation

275. The Panel recommends no compensation for loss of tangible property.

D. Payment or relief to others

1. Facts and contentions

276. Eastern seeks compensation in the amount of USD 335,000 for payment or relief to others, which includes USD 35,000 for unproductive labour costs; USD 30,000 for office expenses; USD 150,000 for travel costs; and USD 120,000 for settlement grant.

(a) Unproductive labour costs

277. Eastern seeks compensation in the amount of USD 35,000 for salaries paid to 35 employees for the month of August 1990. Eastern asserted that all the expenses incurred in the month of August 1990 were unproductive due to the tense situation in Iraq.

(b) Office expenses

278. Eastern seeks compensation in the amount of USD 30,000 for office expenses. It asserted that its audited financial statements for the year-end 31 December 1989 indicate that on an average it incurred an expenditure of USD 18,000 per month for office expenses. It therefore seeks compensation in the amount of USD 18,000 related to office expenses for the month of August 1990. Eastern contended that it had anticipated the situation in Iraq would become normal in three or four months. Therefore, on 15 August 1990, when it departed from Iraq, it gave an amount equivalent to USD 12,193 to its office secretary in Iraq for the payment of rent, electricity and telephone bills and other office expenses.

(c) Travel costs

279. Eastern seeks compensation in the amount of USD 150,000 for travel costs. Eastern asserted that it evacuated its employees from Iraq to Jordan and from Jordan to India. It therefore seeks compensation for various expenses incurred in connection with the evacuation of its employees. For example, expenses incurred on visa fees, air tickets, bus tickets, food costs, hotel stay in Amman, cost of a service agency hired in Amman to facilitate the stay of its employees and an allowance paid to the employees for their onward journey from Delhi to their home towns.

(d) Settlement grant

280. Eastern seeks compensation in the amount of USD 120,000 for compensation paid to its employees. Eastern's manager, in his affidavit stated that the employees were given compensation packages of five to six months' salary because they were "disrupted" in Iraq and were returning home abruptly without any belongings.

2. Analysis and valuation

(a) Unproductive labour costs

281. In support of its claim for unproductive labour costs, Eastern provided a list containing the names of all its employees. It also provided a copy of a hand-written document dated 15 September 1990 entitled Statement of Wages paid to Staff Workers for August 1990, and its audited financial statements for the year end 31 December 1989. The financial statements refer to the number of employees at the branch office in Iraq and the wages paid to them in 1989. Eastern did not provide the employee identification numbers or Iraqi residency permit numbers, and the passport numbers with issuing country. It also failed to provide the payroll records of its employees for both before and after 2 August 1990 and proof of actual payment.

282. The Panel finds that Eastern failed to provide sufficient evidence to substantiate its claim, and therefore, how it suffered a loss.

(b) Office expenses

283. In support of its claim for office expenses, Eastern provided its audited financial statements for the year end 31 December 1989 on the basis of which it is seeking compensation for office expenses for the month of August 1990. It also provided a copy of a hand-written document dated 15 September 1990, which is entitled Details of Payments made to Iraqi Secretary. The Panel finds that the evidence provided by Eastern does not establish that it incurred the alleged expenses.

284. Additionally, the Panel also finds that Eastern has failed to establish that the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait. For example, it failed to establish that it would not have incurred these expenses had it not been for Iraq's invasion and occupation of Kuwait. Moreover, the decision to keep the office running for some time after August 1990 was a commercial decision taken by Eastern, and therefore, those expenses were not incurred as a direct result of Iraq's invasion and occupation of Kuwait.

(c) Travel costs

285. In support of its claim for travel costs, Eastern provided affidavits from its employees who it alleged were in Iraq on 2 August 1990. It also provided a hand written schedule dated 15 September 1990 showing the breakdown of the expenses incurred. Eastern did not provide any independent evidence, which would indicate that it incurred the alleged expenses. The Panel finds that Eastern failed to provide sufficient evidence to substantiate its claim, and therefore, how it suffered a loss.

(d) Settlement grant

286. In support of its claim for settlement grant, Eastern provided an affidavit from its manager which suggests that Eastern gave settlement grants to all its employees. The evidence provided by Eastern does not establish that the alleged amounts were actually paid to the employees. The Panel finds that Eastern failed to provide sufficient evidence to substantiate its claim, and therefore, how it suffered a loss.

3. Recommendation

287. The Panel recommends no compensation for payment or relief to others.

E. Financial losses

1. Facts and contentions

288. Eastern seeks compensation in the amount of USD 305,005 for financial losses, which includes USD 21,500 for deposits with the Post, Telegram and Telephone General Establishment and the Income Tax Department of Iraq; and USD 283,505 for funds left in its bank accounts in Iraq.

289. In its original submission, Eastern asserted that in September 1990 the Government of Iraq seized its deposits and bank accounts. However, in its reply to the article 34 notification, it asserted that after Iraq's invasion and occupation of Kuwait, it was unable to have access to its funds in the bank accounts in Iraq, and therefore, it suffered a loss.

2. Analysis and valuation

290. In support of its claim for the loss of deposits, Eastern provided confirmation letters dated 23 February 1983 from the Post, Telegram and Telephone General Establishment and 25 October 1981 from the Ministry of Finance of Iraq. Both these letters confirm that Eastern paid the amounts of IQD 1,200 and IQD 2,500. There is no indication if and when the deposits were to be released. There is also no evidence to indicate that the deposits have been expropriated, removed, stolen or destroyed.

291. With respect to the loss of funds, Eastern provided an undated letter from the Rafidain Bank confirming its current account balance as IQD 49,315 on 31 December 1989. It also provided a copy of a letter dated 10 January 1990 from the Rasheed Bank, which confirms that its current account balance was debited with an amount of IQD 46,454.

292. This Panel has found in its previous reports that the loss of use of funds on deposit in Iraqi banks is not a direct loss unless the claimant can demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorise the transfer of the converted funds out of Iraq, and that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

293. In its reply to the article 34 notification, Eastern asserted that the funds received in Iraqi dinars were repatriable in foreign currencies after obtaining due approval from the Central Bank of Iraq.

However, it was unable to provide any documents as it left all its documents in Iraq at the time of its departure. The Panel finds that the evidence provided by Eastern does not establish that it had the permission of the Central Bank of Iraq to repatriate its Iraqi dinars into foreign currency. The Panel further finds that the evidence provided by Eastern does not establish that the funds have been expropriated, removed, stolen or destroyed.

294. The Panel finds that Eastern failed to establish that it suffered the alleged loss or that the loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

295. The Panel recommends no compensation for financial losses.

F. Other losses

1. Facts and contentions

296. Eastern seeks compensation in the amount of USD 450,000 for other losses.

297. Eastern asserted that it had completed all its projects on time and to the satisfaction of its clients during the war between Iran and Iraq. After the cessation of hostilities between Iran and Iraq, the Government of Iraq embarked on a massive program of reconstruction of Iraq. Eastern further asserted that Iraqi employers liked to deal with companies with whom they had good working relations. Eastern, because of its nationality and its successful track record in Iraq had hoped to acquire projects of over USD 90,000,000. In order to acquire these projects, Eastern contended that from 1989 onwards it invested additional resources and incurred substantial business development costs.

298. The expenses incurred by Eastern relate to travel and consultancy costs in the amount of USD 125,000; overheads in the amount of USD 225,000, which it calculated at the rate of 0.25 per cent of USD 90,000,000; and USD 100,000 for providing gifts to clients and other expenses for obtaining contracts worth USD 90,000,000.

2. Analysis and valuation

299. As evidence of its claim for other losses, Eastern provided its audited financial statements for the year-end 31 December 1989 and some affidavits. The evidence provided by Eastern does not establish that it actually incurred the alleged expenses. Moreover, the Panel finds that the alleged expenses were incurred before 2 August 1990 and with the hope of acquiring new contracts. As such these expenses were not incurred as a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

300. The Panel recommends no compensation for other losses.

G. Recommendation for Eastern

Table 18. Recommended compensation for Eastern

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	1,130,410	nil
Loss of profits	5,494,256	nil
Loss of tangible property	826,780	nil
Payment or relief to others	335,000	nil
Financial losses	305,005	nil
Other losses	450,000	nil
Total	8,541,451	nil

301. Based on its findings regarding Eastern's claim, the Panel recommends no compensation.

XII. MK ELECTRIC LTD.

302. MK Electric Ltd. ("MK Electric") is a corporation organised according to the laws of the United Kingdom. MK Electric seeks compensation in the amount of KWD 425,323 (USD 1,471,706) for real property losses, losses related to business transaction or course of dealing, and for what it describes as loss of "cash".

303. The claim of MK Electric relates to losses suffered by Kuwait Electrical Wiring Accessories Company of Kuwait ("KEC"). MK Electric asserted that it owns 40 per cent of the shares of KEC and as such it is entitled to 40 per cent of the losses or profits of KEC. MK Electric has therefore made a claim for 40 per cent of the losses suffered by KEC. MK Electric provided a copy of a document entitled Declaration of Trust and Indemnity dated 15 November 1980. This document indicates that a trustee and nominee of MK Electric International Limited held 800 shares of KEC.

304. In both the article 15 and article 34 notifications, MK Electric was requested to provide additional information and documentation. MK Electric failed to respond to both the article 15 and article 34 notifications. In the absence of any information or evidence to the contrary, it appears to the Panel that MK Electric International Limited is a subsidiary of MK Electric.

305. A cross-check undertaken by the secretariat to find overlapping claims showed that KEC had filed a category "E4" claim with the Commission. In its claim, KEC sought compensation in the amount of KWD 1,193,987 for loss of real property, loss of tangible property, and for losses which it described as "mitigation expenses, loss of income, refundable deposits, prepaid expenses, debts, cash on hand, and claim preparation costs". The claim of KEC was reviewed by the "E4" Panel in its Report and Recommendations Made by the Panel of Commissioners Concerning the Seventh Instalment of "E4" claims (S/AC.26/2000/9). The "E4" Panel recommended compensation for KEC in the amount of KWD 509,133 (USD 1,760,452).

306. The documents submitted by KEC do not indicate that KEC only made a claim for 60 per cent of its losses. The "General Assembly" of KEC held a meeting on 2 February 1993. The minutes of that meeting indicate that the person who signed the category "E" claim form on behalf of KEC was authorised by all the partners of KEC. The nominee of MK Electric International Limited was also present at that meeting and had signed the minutes. In which case, it appears to the Panel that KEC had sought compensation for 100 per cent of its losses.

307. In this case, the loss at issue is the loss of the corporation, KEC, of which MK Electric is a shareholder. Paragraph (b) of Governing Council decision 4 (S/AC.26/1991/4) provides that "losses suffered by a business entity that has a separate legal personality must, in principle, be claimed by that entity". As KEC filed its own claim, and because MK Electric failed to show any extraordinary circumstances that would warrant departure from this rule, the Panel finds that MK Electric has no entitlement to file the claim with the Commission.

XIII. PARSONS MAIN INTERNATIONAL, INC.

308. Parsons Main International, Inc. ("Parsons") is a corporation organised according to the laws of the United States operating in the construction industry.

309. In its original submission, Parsons sought compensation in the amount of USD 476,274, which included USD 19,867 for costs incurred in maintaining a performance bond, USD 456,019 for "Employee Payments", and USD 388 for "Emergency Expenses". In its reply to the article 34 notification, Parsons indicated that it was reimbursed both by its employer and its insurance company. It asserted that it received USD 257,121 for "Employee Payments" and USD 388 for "Emergency Expenses". It deducted the amounts received by it from its claim and advised the remaining balances. For the reasons stated in paragraph 8, supra, the Panel has considered the claim in the amounts of USD 19,867 for costs incurred on maintaining a performance bond and USD 198,898 (USD 456,019 minus USD 257,121) for "Employee Payments". The Panel did not consider the claim in the amount of USD 388 for "Emergency Expenses" because Parsons received the full amount from its insurance company.

310. The Panel reclassified loss elements of Parsons' claim for the purposes of this report. The Panel therefore considered the amount of USD 218,765 for payment or relief to others and financial losses, as follows:

Table 19. Parsons' claim

Claim element	Claim amount (USD)
Payment or relief to others	198,898
Financial losses	19,867
Total	218,765

A. Payment or relief to others

1. Facts and contentions

311. Parsons seeks compensation in the amount of USD 198,898 for payment or relief to others. The losses suffered by Parsons relate to a contract that was entered into between the Ministry of Electricity and Water of Kuwait (the "Ministry") and Messrs. Chas T. Main, Inc. ("Chas"), on 14 June 1981. Chas changed its name to Parsons Main, Inc. in January 1992.

312. The losses relate to salaries and benefits paid to expatriate and local employees who were working at the Azzour South Power Station Project (the "Project") in Kuwait, which was scheduled to be completed in October 1988.

(a) Expatriate workers

313. Parsons seeks compensation in the amount of USD 143,467 for salaries and other benefits paid to four of its workers who it asserted were "illegally held as hostages or otherwise prevented from leaving Kuwait from 2 August 1990 until their respective releases by Iraqi authorities". Parsons stated that it paid an amount of KWD 53,185 (USD 183,838) for the period from August to December 1990. However, the loss was reduced to USD 143,467 because it received USD 40,371 as compensation from its insurance company. Parsons did not explain why the insurance company did not reimburse the full amount.

314. In its reply to the article 34 notification, Parsons further explained that two of its employees were detained in Kuwait and Iraq from 2 August to 9 November and 10 November 1990, respectively. The other two employees had managed to escape from Kuwait without being captured.

(b) Local recruits

315. Parsons seeks compensation in the amount of USD 55,431 for payments made to its employees who were recruited in Kuwait. These employees were hired after 1981 to work on the Project works. Parsons asserted that pursuant to the requirements of the Kuwaiti law, it had to pay accrued "vacation pay" and "severance pay" to all its employees. It further asserted that the Ministry would have reimbursed it had it completed the Project works.

316. With respect to the accrued "vacation pay", Parsons asserted that it paid KWD 29,064 to all the employees. However, the loss was reduced to KWD 12,745 because it received payments from the Ministry in the amount of KWD 16,319. Parsons did not explain why the Ministry did not pay the full amount.

317. With respect to "severance pay", Parsons asserted that it paid KWD 65,117 to all its employees at the time when it cancelled their contracts due to the abandonment of the Project works. However, the loss was reduced to KWD 3,292 because it received payments from the Ministry in the amount of KWD 61,825. Parsons did not explain why the Ministry did not pay the full amount.

2. Analysis and valuation

(a) Expatriate workers

318. As evidence of its claim for payment or relief to others, Parsons provided a copy of an invoice "SS-147", invoiced to the Ministry. Parsons did not provide evidence, which established that the alleged amounts were paid to the workers. In its reply to the article 34 notification, it asserted that the bank statements were no longer available and that copies of the payroll records were destroyed according to its record retention policies. Parsons also did not provide copies of the employment contracts or the Kuwaiti civil identification numbers or copies of the passports or the payroll records of its employees.

319. With respect to its claim for the two workers who were held hostage, the Panel finds that Parsons failed to provide sufficient evidence to substantiate its claim, and therefore, how it suffered a loss.

320. With respect to its claim for the two workers who had managed to escape from Kuwait, Parsons did not explain where the workers went or what they did or how the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait. The Panel therefore finds that Parsons failed to establish that the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait. It also failed to provide sufficient evidence to substantiate its claim, and therefore, how it suffered a loss.

(b) Local recruits

321. As evidence of its claim for payment or relief to others, Parsons provided copies of invoices "SS-148" and "SS-149" invoiced to the Ministry. It also provided copies of cheques, which it asserted were sent to the employees. Some of the cheques appear to have been issued twice. It also provided copies of internal correspondence authorising the issue of cheques. However, it did not provide any bank statements, which would establish that the cheques were cashed. Parsons asserted that it was unable to provide the bank statements because they were no longer available. An internal memorandum dated 6 March 1992 indicates that, out of the 60 employees, only 29 had contacted Parsons. Parsons provided a copy of only one employment contract. It also failed to provide the Kuwaiti civil identification numbers, the copies of the passports and the payroll records of the employees. The Panel notes that Parsons stated that all its payroll files were destroyed in Kuwait.

322. The Panel finds that the evidence provided by Parsons does not establish that payments were made. It is also not clear to the Panel why the Ministry did not pay the full amounts. The Panel therefore finds that Parsons failed to provide sufficient evidence and information to substantiate its claim, and therefore, how it suffered a loss.

3. Recommendation

323. The Panel recommends no compensation for payment or relief to others.

B. Financial losses

1. Facts and contentions

324. Parsons seeks compensation in the amount of USD 19,867 for expenses incurred in maintaining a performance bond. Pursuant to article 15 of the contract entered into between Chas/Parsons and the Ministry, a performance bond in the amount of KWD 173,086 was given to the Ministry. The bond was to be released by the Ministry upon completion of the Project works and after Parsons had submitted its final report.

325. Parsons asserted that it was unable to complete its final report because most of its documents were destroyed during Iraq's invasion and occupation of Kuwait, and the problem was further

compounded due to the delays by "Kuwaiti authorities" in responding to its request for guidance in reconstructing acceptable documentation.

2. Analysis and valuation

326. In support of its claim for financial losses, Parsons provided a copy of the contract dated 14 June 1981. It also provided a copy of a request from Bank of America to the National Bank of Kuwait, requesting the latter to issue a guarantee in favour of the Ministry. According to this request, the performance bond was to expire on 1 June 1990. It also provided a no objection letter dated 13 July 1994 from the Tax Department of the Ministry of Finance of Kuwait related to the release of the performance bond.

327. A copy of a letter dated 15 February 1992 from the Ministry indicates that the Ministry refused to release the performance bond and advised Parsons that "the project contract works are not complete and finalisation of all the contracts are still pending, your contractual obligations are not considered as completed". In this letter, the Ministry further indicated to Parsons that it had advised the other contractors to resume their contractual activities. This indicates to the Panel that as at 2 August 1990, there was work, which had yet to be completed by other contractors. In which case, Parsons could not have completed its final report, and therefore, the performance bond would not have been released even if Iraq had not invaded and occupied Kuwait.

328. Furthermore, Parsons in its letter dated 25 February 1992 apprised the Ministry that it had completed its part of the work and the delay in completion of the Project works was beyond its control. It also stated that according to the contract, the maintenance period should have expired in October 1988 and as such its performance bond should have been released by the end of 1988.

329. Since the Project works should have been completed by October 1988 and they were not complete even as of 2 August 1990, the Panel finds that the expenses incurred by Parsons in extending the performance bond were not incurred as a direct result of Iraq's invasion and occupation of Kuwait. The Panel therefore finds that Parsons failed to establish that the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

330. The Panel recommends no compensation for financial losses.

C. Recommendation for Parsons

Table 20. Recommended compensation for Parsons

Claim element	Claim amount (USD)	Recommended compensation (USD)
Payment or relief to others	198,898	nil
Financial losses	19,867	nil
Total	218,765	nil

331. Based on its findings regarding Parsons' claim, the Panel recommends no compensation.

XIV. RECOMMENDATIONS

332. Based on the foregoing, the Panel recommends the following amounts of compensation for direct losses suffered by the claimants as a result of Iraq's invasion and occupation of Kuwait:

(a) T.W. Engineering Limited: nil;

(b) The General Company for Electrical Projects "ELEJECT": nil;

(c) Lurgi AG: nil;

(d) Hoechst CeramTec AG: nil;

(e) Pipeline Construction Co.: USD 30,564;

(f) Fujikura Ltd.: nil;

(g) ABB Relays AG: USD 16,804;

(h) ABB Management (Arabia) Ltd.: nil;

(i) Eastern Limited: nil;

(j) M.K. Electric Ltd.: nil; and

(k) Parsons Main International, Inc.: nil.

Geneva, 26 June 2001

(Signed) Mr. Werner Melis
Chairman

(Signed) Mr. David Mace
Commissioner

(Signed) Mr. Sompong Sucharitkul
Commissioner